# Petition

Supreme Court, U.S.
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81-1754
No. 81-

IN THE

# Supreme Court of the United States

October Term, 1981

HARRY J. OXMAN and RALPH S. LEVITAN,
*Petitioners*

*v.*

COMMONWEALTH OF PENNSYLVANIA,
*Respondent*

On Writ of Certiorari to the Supreme Court of Pennsylvania

## PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED FOR REVIEW

In this attorney discipline case, did the Supreme Court of Pennsylvania err in holding that the forty-month delay between that court's second reversal of the imposition of discipline and the commencement of the retrial did not cause Petitioners actual prejudice in their defense of these charges.

## PARTIES TO PROCEEDING IN PENNSYLVANIA SUPREME COURT

In addition to the Petitioners, special disciplinary counsel were appointed by the Court of Common Pleas of Philadelphia County, Pennsylvania, to prosecute these disciplinary charges and represented the Commonwealth of Pennsylvania in the Supreme Court of Pennsylvania.

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## PETITION FOR WRIT OF CERTIORARI

Petitioners Harry J. Oxman and Ralph S. Levitan respectfully pray that a writ of certiorari be issued to review the judgment of the Supreme Court of Pennsylvania entered in this proceeding on December 17, 1981.

## OPINIONS BELOW

The opinion of the Supreme Court of Pennsylvania filed December 17, 1981 affirming the adjudication and imposition of discipline of the Court of Common Pleas, First Judicial District of Pennsylvania, Special Disciplinary Court, is not yet reported. This opinion is set forth in the attached Appendix at page A1.

The opinion of the Court of Common Pleas, First Judicial District of Pennsylvania, Special Disciplinary Court, dismissing Petitioners' Preliminary Objections filed July 30, 1979 is unreported. It is set forth in Appendix C at page A51. The opinion of the Court of Common Pleas, First Judicial District of Pennsylvania, Special Disciplinary Court, adjudicating the Petitioners guilty of ethical violations and imposing discipline was filed on August 6, 1980, and is unreported. It is set forth in Appendix B at A13.

The first opinion of the Supreme Court of Pennsylvania which reversed the 1973 adjudication and imposition of discipline is reported as *In Re Silverberg*, 459 Pa. 107, 327 A. 2d 106 (1974). The second opinion of the Supreme Court of Pennsylvania which reversed the second adjudication and imposition of discipline was filed on October 3, 1975 and is reported as *In Re Oxman*, 463 Pa. 225, 344 A. 2d 804 (1975). The initial opinion of the

trial court imposing discipline was filed on July 16, 1973 and is unreported. The second trial court opinion was filed on December 27, 1974 and is set forth as an appendix to the second Supreme Court of Pennsylvania opinion, *In Re Oxman, supra,* 463 Pa. at 227, 344 A. 2d at 805. None of the opinions described in this paragraph are reproduced in the Appendix in that none of these opinions bear upon the question presented for review by this Petition.

## STATEMENT OF JURISDICTION

The judgment of the Supreme Court of Pennsylvania sought to be reviewed was dated and entered December 17, 1981. This Court has jurisdiction to review the final judgment of the Supreme Court of Pennsylvania pursuant to 28 U. S. C. § 1257(3) in that Petitioners contend that the Supreme Court of Pennsylvania erroneously rejected Petitioners' claims under the Fourteenth Amendment to the United States Constitution.

## CONSTITUTIONAL PROVISION INVOLVED

Amendment XIV, Section 1 provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

## STATEMENT OF THE CASE

Petitioners Harry J. Oxman and Ralph S. Levitan are persons who were formerly admitted as attorneys to the Bar of the Supreme Court of Pennsylvania and who were adjudged to have violated certain provisions of the Code of Professional Responsibility and the Canons of Ethics and who were suspended from the practice of law for periods of 18 months and 12 months, respectively, commencing on December 17, 1981. Petitioners request this Court to grant certiorari in order to determine the constitutionality of the procedure leading to the imposition of this discipline.

The genesis of this case was an October 28, 1971 Order by the President Judge of the Court of Common Pleas of Philadelphia County transferring jurisdiction of an investigation into alleged solicitation of negligence cases by members of the Philadelphia Bar from the Committee of Censors of the Philadelphia Bar Association to special counsel acting on behalf of a "special judicial investigation".[1] Pursuant to this order, special counsel conducted an investigation of Petitioners including interviews of approximately 200 of their clients and preliminary proceedings before Judge Kendall H. Shoyer. Thereafter, on September 6, 1972, special counsel filed a petition for imposition of discipline charging that Petitioners and another attorney[2] engaged in unethical conduct by soliciting personal injury claim retainers, knowingly filing false and inflated medical claims, filing false contingent fee agreements with the Court of Common Pleas of Philadelphia

1. The factual background of this investigation is more fully described by the Pennsylvania Supreme Court in another case which arose from this same investigation, *In re Shigon*, 462 Pa. 1, 329 A. 2d 235 (1974).

2. This other attorney, Edward Silverberg, is no longer involved in these proceedings.

County,[3] and impeding or attempting to impede the special judicial investigation. These charges were tried before a three-judge Special Disciplinary Court in January and February 1973. On July 16, 1973 that court rendered its decision which adjudicated all three individuals guilty of unethical conduct and suspended them from the practice of law for varying terms.[4]

The Petitioners appealed to the Supreme Court of Pennsylvania which vacated the lower court order and remanded the case to the lower court for further proceedings as a result of trial error.[5] *In re Silverberg*, 459 Pa. 107, 327 A. 2d 106 (1974).

Following this remand of October 1974 the same Special Disciplinary Court, without conducting a further trial, issued a second opinion on December 27, 1974 and reimposed the same discipline. A second appeal was taken to the Supreme Court of Pennsylvania and *on October 3*, 1975 that court again remanded the case to the Special

3. At the time of these charges, Rule 202(f) of the Philadelphia County Local Rules required such contingent fee agreements to be filed with that court. This rule has since been repealed. See *In re Shigon, supra*, 462 Pa. at 19, n. 20, 329 A. 2d at 244, n. 20.

4. Petitioner Oxman was ordered suspended from the practice of law for five years; Petitioner Levitan was ordered suspended from the practice of law for three years; and Edward L. Silverberg was ordered suspended from the practice of law for one year. All of the orders of suspension were stayed pending appeal to the Supreme Court of Pennsylvania.

5. During the first trial, Petitioners were cross-examined by special counsel as to their claim of the Fifth Amendment privilege at the preliminary proceedings before Judge Shoyer. In that the trial court partially rested its credibility findings regarding Petitioners upon this cross-examination, the Pennsylvania Supreme Court reversed the adjudication of unethical conduct and remanded for a new trial. *In re Silverberg*, 459 Pa. 107, 327 A. 2d 106 (1974).

Disciplinary Court *with specific instructions to afford Petitioners a new trial. In re Oxman*, 463 Pa. 225, 344 A. 2d 804 (1975). Following this decision, no action whatsoever in this case was taken until July 13, 1978 when the President Judge of the Philadelphia Court of Common Pleas appointed new special counsel to prosecute these same disciplinary charges against Petitioners.

On February 16, 1979 a new three judge Special Disciplinary Court was empaneled to hear and determine this matter pursuant to the October 3, 1975 Pennsylvania Supreme Court remand. A second petition for imposition of discipline was filed on February 23, 1979 charging the Petitioners, in 51 counts, with conduct essentially identical to that conduct complained of in the earlier 1972 petition for imposition of discipline.

In accordance with local procedure, Petitioners requested the lower court to dismiss the refiled petition for imposition of discipline and asserted, *inter alia*, that the lengthy delay between the October 1975 Pennsylvania Supreme Court remand and the February 1979 refiling of charges violated their constitutional right to a reasonably prompt disposition of the disciplinary charges. Although the trial court recognized that if Petitioners had been prejudiced by the delay dismissal might be appropriate, no specific prejudice was alleged prior to trial and the request for dismissal was denied.[6]

The refiled petition for imposition of discipline contained 51 charges which fell into the same four general categories as the charges contained in the 1972 petition

6. On May 23, 1979, Petitioners filed Preliminary Objections to the refiled petition for imposition of discipline. On June 8, 1979, the Preliminary Objections were dismissed and on July 30, 1979 the trial court filed an opinion in support of dismissal of the Preliminary Objections. This opinion of the trial court is set forth in the attached Appendix at page A51. Hereinafter, references to this Appendix will be cited as "A—".

for imposition of discipline. The charges contained in the refiled petition complained of conduct occurring as early as 1966 and as late as 1972. The majority of the charges concerned Petitioners' alleged conduct in the late 1960's and early 1970's.

The case was tried before a new three-member Special Disciplinary Court from September 4, 1979 through September 12, 1979. Following trial the parties submitted proposed findings of fact and conclusions of law which contained argument regarding the constitutionality of the procedure in light of the lengthy delay. On August 6, 1980 the three-judge court issued its adjudication and imposition of discipline finding Petitioners guilty of 29 of the 51 charges (A13): Petitioner Harry J. Oxman was ordered suspended from the practice of law for eighteen months and Petitioner Ralph S. Levitan for one year (A48). The imposition of discipline was stayed pending Petitioners' appeal to the Supreme Court of Pennsylvania. Following full briefing and argument, the Supreme Court of Pennsylvania issued an opinion on December 17, 1981, per Justice Kauffman, affirming the discipline imposed by the lower court, effective on that same day (A1, A12). The court also issued its Judgment that same day (A62).[7]

The opinion of the high court of Pennsylvania recognized that due process might require dismissal of disciplinary charges if inordinate delay had caused *"substantial actual prejudice"* but held that Petitioners proved "no such thing" (A7). The Petitioners request this Court to issue a writ of certiorari to review the legal correctness of the Supreme Court of Pennsylvania's decision holding that Petitioners Fourteenth Amendment rights were not violated by the lengthy delay in this case.

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7. Petitioners complied with the lower court's December 17, 1981 Pennsylvania Supreme Court Opinion and promptly disengaged themselves from the practice of law.

## REASONS FOR GRANTING THE WRIT

The decision of the Pennsylvania Supreme Court purports to recognize the Petitioners' Fourteenth Amendment right to due process of law in this disciplinary proceeding in connection with the lengthy delay between the 1975 appellate remand and the 1979 refiling of the petition for imposition of discipline. However, even a cursory review of the record of proceedings in the trial court reveals that Petitioners were denied their constitutional right to due process of law in that they were actually prejudiced by the lengthy delay. The Pennsylvania Supreme Court has purported to decide, but has clearly refused to apply, an important aspect of federal constitutional law. This Court should grant certiorari in order to articulate and apply the correct legal test in connection with delay and the Fourteenth Amendment right to due process of law in the context of attorney disciplinary proceedings.

### 1. The Petitioners' Fourteenth Amendment Right to Procedural Due Process of Law in This Attorney Discipline Proceeding Encompasses the Right to a Reasonably Prompt Disposition of the Disciplinary Charges Free From Actual Prejudice Occasioned by Any Unjustified Delay.

The right of an attorney to practice law is a constitutionally protected right which may be revoked or suspended only in a manner consistent with the principles of substantive and procedural due process. This follows from the general rule of strictly construing the power to revoke a license where the procurement of that license is a prerequisite to engaging in a particular profession. *In Re Ruffalo*, 390 U. S. 544, 550 (1968); *Board of Examiners of Veterinary Medicine v. Mohr*, 485 P. 2d 235 (Okla. 1971). And although the states maintain the power to control the practice of law in their courts, clearly "that

power cannot be exercised so as to ignore federally protected rights." *National Association for the Advancement of Colored People v. Button*, 371 U. S. 415, 439 (1963). Likewise, because of the gravity of punishment which may be meted out in a disciplinary proceeding, "the test which must be employed as to the constitutionality of the disciplinary machinery to be used must be a very severe one." *In re Bithoney*, 486 F. 2d 319, 323 (1st Cir. 1973).

Without question, the primary purpose of the disciplinary process is to safeguard the public and the courts from members of the bar who are untrustworthy and unfit to practice law. *Ohralik v. Ohio State Bar Association*, 436 U. S. 447 (1978). As a direct consequence of such a proceeding, the attorney may be subject to a penalty or punishment designed to protect the public—disbarment or suspension. The possible imposition of this type of punishment on the lawyer removes this type of case from the ordinary run of civil matters. Instead it is an adversary proceeding, quasi-criminal in nature. *In re Ruffalo, supra; Javits v. Stevens*, 382 F. Supp. 131 (S. D. N. Y. 1974).

Since the right to practice law has been deemed sufficiently precious so as to be surrounded with a panoply of legal protection, the quasi-criminal nature of the disciplinary proceeding has influenced the courts, including this Court, to recognize the goal of providing the strictest possible due process standards for the procedures used to carry out necessary bar discipline. Hence, the attorney against whom discipline is sought must be advised of the nature of the charges, *In re Ruffalo, supra*, and he can invoke the Fifth Amendment privilege against self-incrimination, *Spevack v. Klein*, 385 U. S. 511 (1967).

The right of a criminal defendant to a speedy trial is a fundamental constitutional right imposed upon the states

by the due process clause of the Fourteenth Amendment. *Barker v. Wingo*, 407 U. S. 514 (1972); *Klopfer v. North Carolina*, 386 U. S. 213 (1967). A criminal defendant's right to a speedy trial arises only after formal criminal prosecution is begun; nonetheless, pre-indictment delay can form the basis for a dismissal of criminal charges if, *inter alia*, actual prejudice results. *United States v. Lovasco*, 431 U. S. 783 (1977). *See, also, United States v. MacDonald*, 632 F. 2d 258 (4th Cir. 1980), *cert. granted* No. 80-1582, 49 U. S. L. W. 3882 (Order of May 26, 1981), argued December 7, 1981 (50 U. S. L. W. 3483).

As an element of procedural due process, the notion of entitlement to a reasonably prompt disposition of administrative proceedings has been recognized in the context of parole revocation proceedings. In *Morrissey v. Brewer*, 408 U. S. 471, 488 (1972), this Court stated:

> "The [parole] revocation hearing must be tendered within a reasonable time after the parolee is taken into custody."

Further, the concept of entitlement to a prompt disposition of administrative proceedings has recently been added to those procedural rights protected by the due process clause in statutory benefit civil proceedings. *Kelly v. Railroad Retirement Board*, 625 F. 2d 486 (3d Cir. 1980); *but see, Wilkinson v. Abrams*, 627 F. 2d 650 (3d Cir. 1980).

Although it has not been decided by this Court, state courts in attorney discipline cases have recognized that the right to procedural due process encompasses the right to disposition of the charges without unreasonable delay. Courts recognizing this right, however, limit dismissal of charges to those situations in which the respondent attorney has been actually prejudiced by the delay. *Caldwell*

*v. State Bar of California,* 13 Cal. 3d 488, 119 Cal. Rept, 217, 531 P. 2d 785 (1975); *Maryland State Bar Association v. Frank,* 272 Md. 528, 325 A. 2d 718 (1974) (by implication). And in this very case, the Supreme Court of Pennsylvania held that substantial actual prejudice occasioned by inordinate delay might require dismissal of the charges.

The issues which are litigated in many attorney discipline cases—including this case—involve somewhat traditional disputes involving historic facts; courts and other adjudicative authorities commonly resolve such factual disputes. In a situation where there has been inordinate delay, however, the accuracy of the fact finding process may be thwarted. Additionally, attorneys, such as Petitioners in this case, who endure pending disciplinary charges for long periods of time are subjected to adversities which, while differing from the hardships of incarceration which criminal defendants often must suffer, are no less real or burdensome. The Petitioners and their families predictably suffered severe anxiety while the sword of these charges hung over Petitioners' heads.

It is for these reasons that the Fourteenth Amendment requires that a government seeking to suspend or revoke the license to practice law must do so with reasonable dispatch.

**2. The Prejudice Suffered by These Petitioners as a Result of the Delay Requires Dismissal of These Disciplinary Charges.**

Prior to the 1979 retrial of these disciplinary charges, the trial court recognized, in accordance with the principles of *Caldwell v. State Bar of California, supra,* that specific prejudice resulting from the delay could warrant remedial action (A59-60). And after the trial of this case

before that court the adjudication and imposition of discipline again recognized that:

> "[D]ue process requirements may necessitate dismissal of disciplinary charges if delay has caused actual prejudice." (A44)

But having stated this rule of law both before trial and after, the trial court fully ignored the rule and stated:

> "In the instant matter the Respondents have not alleged that they were prejudiced by the delay in any specific way. They asserted only that memories may have dimmed and that they are older unless able to pursue new careers if they should be disbarred." (A46)

These two sentences in the post-trial adjudication and imposition of discipline are identical, word for word, to the trial court's pre-trial opinion (A59). And the Pennsylvania Supreme Court, in affirming the imposition of discipline, again recited that Petitioners proved no prejudice resulting from the delay (A7).

The trial court's rejection of this substantial procedural due process claim flatly ignores the fact that Petitioners submitted detailed proposed findings of fact and conclusions of law which clearly demonstrated the significant prejudice occasioned by the delay in connection with sixteen separate witnesses. And the Pennsylvania Supreme Court, in rejecting the claim, similarly ignored the hard evidence in the trial record which showed the serious lapses of memory of these important witnesses. Certiorari should be granted and this Court should determine the appropriate legal test to be applied by the lower courts in deciding the prejudice issue in this case and in similar cases.

As is set forth above, the original petition for imposition of discipline was filed in 1972.[8] The original petition called into question Petitioners' conduct for the period from 1966 to 1972. The refiled petition which was presented in 1979 essentially repeated the allegations of the 1972 petition, similarly calling into question Petitioners' conduct from 1966 to 1972. The bulk of the trial testimony therefore concerned events which occurred approximately a decade and more prior to the trial in the fall of 1979.

Several examples from the trial record demonstrate the serious prejudice suffered by Petitioners. Petitioners were convicted of soliciting the retainer of Mr. and Mrs. Waverly Wyche (A25) and attempting to impede the investigation by counseling Mr. Wyche to testify falsely before Judge Shoyer (A32). The accident in which the Wyches were involved occurred in 1966; Mr. Wyche testified in 1979 that he met with Petitioner Levitan in 1966 and again in 1967 and 1968.[9] The undisputed evidence is, however, that Petitioner Levitan did not even join the law firm until June of 1969 (A19, ¶ 4). Mr. Levitan was convicted of counseling Mr. Wyche to testify falsely before Judge Shoyer in 1972. Although his testimony on direct examination as a prosecution witness was positive concerning his identification of Petitioner Levitan as the individual who urged him to testify falsely, he conceded on cross-examination that he had previously testified that it was Petitioner Oxman who urged him t testify falsely. The transcript of the 1972 testimony contains seventeen separate occasions wherein Mr. Wyche identified Petitioner Oxman as the individual who had directed him to testify

8. No post-1972 charges have ever been suggested.

9. Mr. Wyche so testified on September 4, 1979. This testimony occurs at pages 167 through 169 of the original trial record.

falsely.[10] Notwithstanding this wide disparity in Mr. Wyche's testimony, the lower court found Petitioner Levitan guilty of attempting to impede the special judicial investigation in connection with Mr. Wyche. (A33, p. ¶ 122).

Petitioners were convicted of attempting to impede the special judicial investigation in connection with the Elsie Drayton case which involved an auto accident in 1967 (A31, ¶ 111). She retained Petitioners to prosecute a claim against Yellow Cab. Petitioners were convicted of counseling her to testify falsely concerning Petitioner Oxman's referral of her to one Dr. Edwin Rothman (A31, ¶ 114). It was well known among the Philadelphia plaintiffs' bar that counsel for Yellow Cab was working closely with the special judicial investigation and it was, therefore, predictable that special counsel would have access to Yellow Cab's legal files. Elsie Drayton gave a deposition in which she stated, under oath, that she had been referred to Dr. Rothman by Mr. Oxman. However, during her 1979 testimony, on cross-examination, she could not recall having given a deposition to counsel for Yellow Cab, nor could she remember having testified at the initial trial of this disciplinary proceeding in 1973. In light of Petitioners' knowledge concerning the relationship between Yellow Cab and the special judicial investigation, such cross-examination was obviously critical. It strains credulity to believe that an attorney with knowledge that Yellow Cab was assisting the special judicial investigation would advise a client to testify in a manner inconsistent with a deposition given to the Yellow Cab attorneys. Her loss of memory, however, completely forestalled effective cross-examination and Petitioners were, in fact, convicted of this most unlikely offense.

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10. Trial transcript of September 5, 1979 at page 189.

Another instance of the prejudice suffered by Petitioners as a result of the lengthy delay occurred in connection with the Kenneth Harris case. Petitioners were convicted of soliciting the Kenneth Harris personal injury claim retainer (A23) and knowingly filing a false contingent fee agreement with the Court of Common Pleas in connection with his case (A28). Mr. Harris, frankly acknowledging that he experienced a significant loss of memory, could not remember going to Petitioners' law office on the date listed on the contingent fee agreement, could not remember any discussion with Petitioner Oxman concerning who recommended him to the law firm and could not even recall whether he or Mr. Jordan (an investigator employed by Petitioners whom the prosecution alleged was a "touter") first mentioned obtaining a lawyer. In fact, Mr. Harris could not recall the events sufficiently even to acknowledge the truth of his prior 1973 trial testimony given in this very case.

The several paragraphs above detail but some of the more egregious instances of prejudice which resulted from the delayed retrial of Petitioners. Notwithstanding that these same arguments were vigorously pressed by Petitioners both before the trial court (in connection with proposed findings of fact and conclusions of law) and before the Supreme Court of Pennsylvania (in both Petitioners' brief to that court and oral argument before that court), neither the trial court nor the Supreme Court of Pennsylvania even attempted to analyze whether this prejudicial delay was sufficient to constitute a violation of Petitioners' rights under the Fourteenth Amendment. This Court should grant certiorari in order to establish the appropriate legal test as to unreasonable delay in license revocation proceedings and to apply that correct test to the facts of this case.

## CONCLUSION

The Petitioners request this Court to issue a writ of certiorari and to thereby review the judgment of the Supreme Court of Pennsylvania which rejected Petitioners substantial Fourteenth Amendment claim and affirmed the trial court's adjudication and imposition of discipline.

Respectfully submitted,

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# Appendix

## APPENDIX A

**Opinion of the Supreme Court of Pennsylvania**

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J-359

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IN THE
SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

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Nos. 270 & 369, January Term, 1979 and
No. 80-3-704

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IN RE: HARRY J. OXMAN
and RALPH S. LEVITAN,

Appellants

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Appeal from the Orders of the Special Disciplinary Court
Dated June 8, 1979, September 4, 1979
and August 6, 1980

ARGUED: October 20, 1981

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OPINION

(Filed: Dec. 17, 1981)

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KAUFFMAN, *J.*

Harry J. Oxman and Ralph S. Levitan appeal from orders of the Special Disciplinary Court of the Court of Common Pleas of Philadelphia suspending them from the

practice of law for one and one-half years and one year respectively for 29 violations of the Canons of Ethics and the Code of Professional Responsibility.[1] Because we conclude that the findings of fact are adequately supported by the record, and because those facts forcefully establish that the appellants are unworthy of the public trust and confidence vested in them as members of the legal profession, we affirm the orders imposing discipline.[2]

The record discloses a pattern of serious misconduct by appellants, culminating in a reprehensible effort to impede the disciplinary investigation by requesting witnesses

1. On October 28, 1971, the Honorable D. Donald Jamieson, then President Judge of the Court of Common Pleas of Philadelphia, authorized a Special Judicial Investigation into allegations of unethical conduct by members of the Philadelphia bar, and appointed three judges from the Court of Common Pleas to constitute a Special Disciplinary Court ("Court").

The Court found appellants to have counseled and requested six clients and former clients to testify falsely when they appeared before the investigating judge in the Special Judicial Investigation, thereby impeding the investigation in violation of Disciplinary Rules 1-102(A)(4),(5), and (6) of the Code of Professional Responsibility. The Court further found that appellants used false information in eleven retainer agreements filed in the Court of Common Pleas of Philadelphia, again in violation of Disciplinary Rules 1-102(A)(4), (5), and (6). Finally, the Court found appellants to have solicited twelve personal injury claims through an "investigator," in violation of Canons 27 and 28 of the Canons of Ethics in effect prior to 1970, which prohibit solicitation through touters and the employment of agents or runners to engage an attorney for personal injury claims, and of Disciplinary Rules 1-102 (A)(2) and 2-103(A), which prohibit conduct circumventing a disciplinary rule through actions of another and recommending employment as a private practitioner to a person who has not sought such advice.

2. Jurisdiction is vested in this Court pursuant to the Act of July 9, 1976, P.L. 586, No. 142, § 2, *as amended*, 42 Pa.C.S.A. § 722(8).

to give false testimony. William R. Jordan ("Jordan"), an "investigator" employed by appellants' law firm ("firm"), frequently appeared at accidents, hospitals, and the homes of accident victims for the purpose of pursuading potential claimants to retain the firm. Contingent fee agreements were then filed by appellants in the Court of Common Pleas of Philadelphia which falsified referral sources in an effort to conceal their unethical solicitations. Appellants thereafter compounded their earlier transgressions by counseling and requesting clients and former clients to testify falsely before the investigating judge in the Special Judicial Investigation. The sufficiency of the evidence establishing these facts is not challenged.

On September 6, 1972, then Special Counsel William Stewart filed a Petition for Imposition of Discipline. A trial on the merits was held, and, on July 16, 1973, the Court suspended Oxman from the practice of law for five years and Levitan for three years.[3] Because of the conduct of Special Counsel during the trial, however, that decision was reversed by an Order of this Court on October 16, 1974, and the case was remanded for a new hearing.[4]

Upon remand, the Court did not conduct a new hearing, but reconsidered the prior record, and on December 27, 1974, issued a supplemental Order and Opinion re-

3. The Court also suspended a third member of the firm, Edward L. Silverberg, for one year. Silverberg is not a party to this appeal.

4. This Court found trial error in permitting Special Counsel's cross-examination of appellants and another defense witness concerning their invocation of the Fifth Amendment privilege against self-incrimination at preliminary proceedings. *Matter of Silverberg*, 459 Pa. 107, 327 A.2d 106 (1974). In its original Adjudication of July 16, 1973, the Court had relied, in part, upon this prior invocation of the Fifth Amendment privilege to resolve credibility issues against appellants.

imposing the same discipline. Because the reconvened Court did not afford appellants a new hearing on the merits, however, this Court reversed on October 3, 1975, and remanded again for a new trial.[5]

No further action was taken until March 14, 1978, when the Honorable Edward J. Bradley, President Judge of the Court of Common Pleas of Philadelphia, requested that counsel to the Disciplinary Board of the Supreme Court of Pennsylvania pursue the matter. This was agreed to on May 3, 1978, and on July 13, 1978, Judge Bradley appointed Allen B. Zerfoss, the Disciplinary Board's Chief Counsel, and his assistant John W. Herron, as Special Counsel to prosecute these disciplinary charges against appellants. On February 16, 1979, Judge Bradley also appointed a new Special Disciplinary Court ("Disciplinary Court").

On February 23, 1979, new Special Counsel refiled a Petition for Imposition of Discipline, and on April 16, 1979, appellants filed preliminary objections which raised (1) lack of jurisdiction of the Disciplinary Court, (2) delay in rescheduling trial, and (3) fairness and impartiality of the Disciplinary Court. The preliminary objections were dismissed on June 8, 1979, and an appeal from that dismissal was filed in this Court.

On June 27, 1979, appellants petitioned the Disciplinary Court to amend its June 8, 1979 order to certify that a controlling question of law existed. On the same day, appellants petitioned this Court for permission to appeal an interlocutory order. The Disciplinary Court denied appellants' petition on June 29, 1979. Appellants thereafter filed with this Court a petition seeking review of that denial. On August 16, 1979, this Court denied both of appellants' then pending petitions.

5. *Matter of Oxman*, 463 Pa. 225, 344 A.2d 804 (1975).

On August 27, 1979, appellants filed a motion entitled "Plea in Bar, or, In the Alternative, Motion to Dismiss the Petition for Imposition of Discipline," alleging that a retrial of the disciplinary charges would violate their Fifth Amendment double jeopardy rights. On September 4, 1979, the Disciplinary Court denied this motion and also denied appellants' requests for a stay of the proceedings and for the Disciplinary Court to recuse itself. On the same day, appellants filed a Notice of Appeal and requested this Court to stay the trial until their double jeopardy claim had been resolved. We orally denied appellants' request for a stay, and the trial proceeded. The Disciplinary Court issued its Adjudication and Imposition of Discipline on August 6, 1980. An appeal was taken to this Court, and on September 2, 1980, the Disciplinary Court stayed imposition of discipline. On December 2, 1980, all pending appeals were consolidated by this Court.

I

Appellants first contend that the Petition for Imposition of Discipline should have been dismissed because the delay between this Court's remand on October 3, 1975 and the retrial violated their constitutional rights to a speedy trial.[6] We disagree.

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6. The Sixth Amendment to the United States Constitution, applicable to the states through the Fourteenth Amendment, provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor and to have the Assistance of Counsel for his defense.

U.S. Const. amend VI.

It is now well-established that not all constitutional protections afforded defendants in criminal cases apply to disciplinary proceedings. *See Office of Disciplinary Counsel v. Campbell*, 463 Pa. 472, 345 A.2d 616 (1975) (principles of *res judicata* and double jeopardy do not bar a disciplinary proceeding which follows disposition of criminal charges although based on substantially the same conduct); *Berlant Appeal*, 458 Pa. 439, 328 A.2d 471 (1974), *cert. den.*, 424 U.S. 926 (1976) (standard of proof required for sustaining disbarment is "by a preponderance of the evidence" rather than "beyond a reasonable doubt").[7] In particular, the Sixth Amendment right to a speedy trial has been held to be inapplicable in disciplinary proceedings. As the Supreme Court of Oregon recently explained:

> It ought to be made clear . . . that *the primary purpose of professional disciplinary proceedings is to protect the public.* The punishment of an offended member of the profession is indeed a serious matter, but it is incidental to the protection of the public. If the conduct of a member of the Bar disqualifies him from the practice of law, it would not be in the public interest to dismiss the disciplinary proceedings for no reason other than the Bar's failure to prosecute them with proper dispatch. (Emphasis supplied).

*In re Weinstein*, 254 Or. 392, 394, 459 P.2d 548, 549 (1969), *cert. den.*, 398 U.S. 903 (1970). *See also Fitzgerald v. Cawley*, 368 F.Supp. 677 (S.D.N.Y. 1973); *Bar Association of Baltimore City v. Posner*, 275 Md. 250, 339

7. *Cf. In re Ruffalo*, 390 U.S. 544 (1968) (attorney against whom discipline is sought must be advised of the nature of the charges); *Spevack v. Klein*, 385 U.S. 511 (1967) (attorney in disciplinary proceeding can assert Fifth Amendment privilege against self-incrimination).

A.2d 657 (1975), *cert. den.*, 423 U.S. 1016 (1975). While due process may require dismissal of disciplinary charges if inordinate delay has caused substantial *actual* prejudice, *Caldwell v. State Bar of California*, 13 Cal.3d 488, 119 Cal.Rptr. 217, 531 P.2d 785 (1975), appellants, who at all times have retained the unlimited right to practice law, have proved no such thing.[8]

While we expressly and emphatically disapprove of the delay in these disciplinary proceedings, the record confirms that it was inadvertent and that it has not impeded appellants' right to a fair hearing.[9] We thus conclude that the Disciplinary Court correctly refused to dismiss the Petition for Imposition of Discipline.

## II

Appellants next contend that their constitutional rights not to be placed twice in jeopardy for the same offense were violated by retrial after this Court concluded that the conduct of Special Counsel at the first trial required a reversal.[10] We again dis-

8. Although appellants assert that some witnesses suffered impaired memories since the 1973 proceedings, the Disciplinary Court reasonably concluded that most witnesses demonstrated excellent recall and that the evidence of the essential elements of the offenses charged was clear and convincing. Moreover, the transcript of the first proceeding was at all times available to the witnesses and was in fact used in the rehearing to refresh recollections where necessary.

9. On November 12, 1975, former Special Counsel William Stewart requested to withdraw from the case because of other commitments. Judge Bradley then became involved with reorganization of the Philadelphia court administration staff. We further note that appellants failed to request that a date for rehearing be set after the remand.

10. The Fifth Amendment to the United States Constitution, applicable to the states through the Fourteenth Amendment, provides in pertinent part:

agree.[11] Application of the double jeopardy clause generally extends only to criminal proceedings, *see United States v. Ward*, 448 U.S. 242 (1981); *Helvering v. Mitchell*, 303 U.S. 391 (1937), and since disciplinary proceedings are not criminal in nature, courts consistently have rejected double jeopardy defenses asserted therein. *Fitzgerald v. Cawley*, 368 F.Supp. 677 (S.D.N.Y. 1973);

10. (Cont'd.)

No person shall be . . . . subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. V.

11. At the first trial in 1973, Special Counsel cross-examined appellants and another defense witness concerning their assertion of the privilege against self-incrimination at a preliminary proceeding. Appellants characterize this cross-examination as intentional prosecutorial misconduct and contend therefore that the double jeopardy clause bars retrial. In 1973, however, no court decision precluded Special Counsel from cross-examining defense witnesses concerning their assertion of the privilege against self-incrimination. It was not until 1974 that we first extended to disciplinary proceedings the ruling of *Griffin v. California*, 380 U.S. 609 (1965), which held that a prosecuting attorney may not comment upon a *criminal* defendant's assertion of the Fifth Amendment privilege. *Matter of Silverberg*, 459 Pa. 107, 327 A.2d 106 (1974). There is thus no evidence of intentional prosecutorial misconduct.

Moreover, subsequent to our decision in *Silverberg*, the Supreme Court of the United States has held that it was not unconstitutional in a prison disciplinary proceeding for the state to advise a prisoner that if he remained silent, his silence would be used against him, so long as any discipline imposed was not based solely on the refusal to testify. *Baxter v. Palmigano*, 425 U.S. 308 (1976). The *Baxter* Court expressly noted that the Fifth Amendment does not prohibit adverse inferences against parties in *civil* actions when they refuse to testify.

*Office of Disciplinary Counsel v. Campbell, supra; in re Mackay,* 416 P.2d 823 (Alaska 1966), *cert. den.*, 385 U.S. 890 (1966).[12]

III

Appellants further contend that the Disciplinary Court erred in refusing to recuse itself after receiving prejudicial information in a pre-trial proceeding.[13] Courts uniformly recognize, however, that a judge is presumed to be impartial, *Commonwealth v. Conrad,* 241 Pa. Super. 324, 361 A.2d 421 (1976), and that information learned by him in his judicial capacity does not necessarily result in personal bias requiring disqualification. *United States v. Patrick,* 542 F.2d 381 (7th Cir. 1976), *cert. den.*, 430 U.S. 931 (1977); *United States v. Gilboy,* 162 F.Supp.

12. Because the principles of double jeopardy do not apply to disciplinary proceedings, the interlocutory appeal filed without permission on September 4, 1979 did not divest the Disciplinary Court of jurisdiction to proceed to trial, and on September 4, 1979, this Court rejected appellants' application to stay proceedings. *See* Pa.R.App.P. 1313.

13. On August 27, 1979, appellants filed a motion entitled "Plea in Bar or, in the Alternative, Motion to Dismiss the Petition for the Imposition of Discipline," contending that Special Counsel had engaged in intentional prosecutorial misconduct at the first trial, and that the Fifth Amendment right not to be placed twice in jeopardy for the same offense therefore barred further prosecution. Appellants requested the Disciplinary Court to consider the motion and then recuse itself since it would have knowledge that they had asserted the privilege against self-incrimination or, in the alternative, to assign the motion to a different panel of judges. On September 4, 1979, during oral argument on appellants' motion, each member of the Disciplinary Court advised counsel that he had not examined or read the contents of the sealed envelope containing appellants' motion and supporting memorandum. The Disciplinary Court denied the motion and appellants' request for a stay, and the matter proceeded to trial after this Court also rejected appellants' request for a stay.

384, 393-94 (M.D. Pa. 1958).[14] Since the Disciplinary Court learned of appellants' prior assertion of the Fifth Amendment privilege from appellants themselves, and since it clearly had the capacity to dismiss such a fact from its consideration, that Court was not precluded from rendering a fair determination in this matter.[15]

## IV

Our primary task in disciplinary matters is to protect the public from unfit attorneys and to maintain the in-

14. The Pennsylvania cases cited by appellants, *Commonwealth v. Goodman*, 454 Pa. 358, 311 A.2d 652 (1973), and *Commonwealth v. Jones*, 259 Pa. Super. 103, 393 A.2d 737 (1978), do not compel the conclusion that the Disciplinary Court should have recused itself after receiving the allegedly prejudicial information. In those cases, the courts held that the introduction of evidence of prior convictions was so inflammatory and prejudicial that fair trial was not possible. Here, on the other hand, the allegedly prejudicial information related solely to appellants' prior invocation of the right against self-incrimination and this information was provided to the Disciplinary Court by appellants. *Cf. Baxter v. Palmigano, supra*, n.11.

15. Appellants also contend that the Disciplinary Court erred in refusing to conduct a complete evidentiary hearing on their claim of selective prosecution. It is settled, however, that not all selective prosecution is forbidden; only selective prosecution based on some unjustifiable standard such as race, religion, or other arbitrary classification is constitutionally proscribed. *Oyler v. Boles*, 368 U.S. 448 (1962); *Shade v. Commonwealth of Pennsylvania, Department of Transportation*, 394 F.Supp. 1237 (M.D. Pa. 1975). Appellants here have not even alleged selective prosecution based on race, religion, or other suspect classification, and have failed to demonstrate even a colorable entitlement to the claim of selective prosecution. The Disciplinary Court thus did not err in refusing to conduct a full evidentiary hearing on the issue. *United States v. Ahmad*, 347 F.Supp. 912 (M.D. Pa. 1972), *aff'd in part and rev'd in part sub. nom., United States v. Berrigan*, 482 F.2d 171 (3d Cir. 1973); *Commonwealth v. Dessus*, 262 Pa. Super. 443, 396 A.2d 1254 (1978).

tegrity of the legal profession and the judicial process. *See Office of Disciplinary Counsel v. Lewis*, 403 Pa. 519, 426 A.2d 1138 (1981); *Office of Disciplinary Counsel v. Grigsby*, 403 Pa. 194, 425 A.2d 730 (1981). As we observed in *Office of Disciplinary Counsel v. Lewis, supra, quoting Maryland State Bar Association, Inc. v. Agnew*, 271 Md. 543, 318 A.2d 811:

> Few vocations offer as great a spectrum for good and honorable works as does the legal profession. The attorney . . . is a fiduciary, a confidant, an advisor, and an advocate . . . .
>
> A *court has the duty, since attorneys are its officers, to insist upon the maintenance of the integrity of the bar and to prevent the transgressions of an individual lawyer from bringing its image into disrepute.* Disciplinary procedures have been established for this purpose, not for punishment, but rather as a catharsis for the profession and a prophylactic for the public. (Emphasis in original).

493 Pa. at 528, 426 A.2d at 1142.

In soliciting clients, in falsifying contingent fee agreements, and, most seriously, in requesting witnesses to testify falsely in an effort to impede the Special Judicial Investigation, appellants have breached their ethical duties and have violated the public trust. We particularly condemn appellants' reprehensible efforts to obstruct the administration of justice. *See Office of Disciplinary Counsel v. Campbell, supra; Montgomary County Bar Association v. Hecht*, 456 Pa. 13, 317 A.2d 597 (1974). Because the record before us reveals a deplorable disregard for the integrity of the judicial process, we are compelled to conclude that appellants are unworthy of the public trust and confidence vested in them as members of the legal profession.

Accordingly, we affirm the discipline imposed by the Disciplinary Court and order that appellants be suspended from the practice of law immediately. It is further ordered that the periods of suspension shall be computed from the date of filing this Opinion.

## APPENDIX B

## Opinion of the Special Disciplinary Court

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IN THE
COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
SPECIAL DISCIPLINARY COURT

---

AUGUST TERM, 1972 No. D-27

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IN RE: HARRY J. OXMAN
and
RALPH S. LEVITAN

---

ADJUDICATION
AND
IMPOSITION OF DISCIPLINE

---

ANDERSON, *J.*
BULLOCK, *J.*
DELLA PORTA, *J.* August 6, 1980

This adjudication and imposition of discipline is filed following an evidentiary hearing held from September 4, 1979 through September 12, 1979, and the receipt of briefs and requests for findings, pursuant to a Petition for Imposition of Discipline filed against Respondents, Harry Oxman, Esquire, and Ralph S. Levitan, Esquire, and Answer thereto.

### I. HISTORY

By an Amended Order dated October 28, 1971, the Honorable D. Donald Jamieson, the President Judge of

the Court of Common Pleas of Philadelphia, established procedures for a special judicial investigation of allegations of unethical conduct by members of the Philadelphia bar.[1]

On September 6, 1972, a Petition for Imposition of Discipline was filed against Respondents Harry J. Oxman, Esquire, and Ralph S. Levitan, Esquire. A hearing on the merits was held and on July 16, 1973, the decision of a three-member Special Disciplinary Court of the Court of Common Pleas of Philadelphia was rendered, suspending Respondents from the practice of law.[2] This decision was reversed by an Order of the Supreme Court dated October 16, 1974, because of error committed during the hearing, and the case was remanded for a new disciplinary hearing. *In the Matter of Silverberg*, 459 Pa. 107, 327 A.2d 106 (1974).

Upon remand, the Special Disciplinary Court, consisting of the same three judges who had previously heard the case was reconvened. The Special Disciplinary Court did not conduct a new hearing, but rather reconsidered the record of the prior hearing. On December 24, 1974, a supplemental Opinion and Order was issued by the Disciplinary Court affirming its previous decision that Respondents should be suspended from the practice of law. That decision was reversed by the Supreme Court by an Order dated October 3, 1975, because Respondents had not been afforded a new hearing on the merits by the reconvened Disciplinary Court. *In the Matter of Oxmon*, 463 Pa. 225, 344 A.2d 804 (1975). The case was remanded a second time for a new hearing.

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1. For a discussion of the history of that investigation and the contents of the Order of October 28, 1971, see *In the Matter of Shigon*, 462 Pa. 1, 329 A.2d 235 (1974).

2. A third member of the law firm, Edward L. Silverberg, was also suspended from the practice of law.

No action was taken on the matter until March 14, 1978, when President Judge Edward J. Bradley wrote to Allen B. Zerfoss, Esq., Chief Disciplinary Counsel of the Disciplinary Board of the Supreme Court of Pennsylvania, requesting the Board to handle any further necessary proceedings. The requests was agreed to on May 3, 1978.[3] By order of July 13, 1978, Judge Bradley appointed Mr. Zerfoss and John W. Herron, Esq., Assistant Disciplinary Counsel-in-Charge of District 1, new special counsel to prosecute the disciplinary charges. William Stewart, Esq., who was the original special counsel, was appointed to serve as consultant to special counsel.

By Order of February 16, 1979, Judge Bradley appointed a new Special Disciplinary Court, the members being the Honorable Levy Anderson, the Honorable Norman Jenkins and the Honorable Armand Della Porta.

On February 21, 1979, a pre-trial conference was held.[4] Pursuant to that meeting, on February 23, 1979, a Petition for Imposition of Discipline was refiled by special counsel.

By Order of May 11, 1979, Judge Bradley replaced Judge Jenkins with the Honorable Matthew W. Bullock, Jr., because of a potential personal conflict of interest.

On May 23, 1979, Respondents' Preliminary Objections were filed. Oral argument was held on June 7, 1979. By Order of June 8, 1979 and Opinion of July 30, 1979, the Preliminary Objections were dismissed.

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3. Memorandum in Support of Petitioner's Answer to Respondents' Objections, unlettered Exhibit, Letter of May 4, 1979 from Judge Edward J. Bradley to John W. Herron, Esq.

4. The conference was attended by the Honorable Levy Anderson, the Honorable Norman Jenkins, the Honorable Armand Della Porta; Allen B. Zerfoss, Esq., John W. Herron, Esq. and Thomas B. Rutter, Esq., representing Respondents.

On June 25, 1979, an Appeal was filed in the Supreme Court by Respondents from the dismissal of the Preliminary Objections.[5]

On June 27, 1979, Respondents petitioned the Supreme Court for permission to appeal from an interlocutory order.

On the same day, Respondents petitioned this Court to amend its Order of June 8, 1979 to certify pursuant to Pennsylvania Rule of Appellate Procedure 1312(a)(2) that a controlling question of law existed so as to permit an interlocutory appeal.

On June 29, 1979, this Court denied the Petition to Amend the Order of June 8, 1979.

On July 18, 1979, Respondents petitioned the Supreme Court to review this Court's Order of June 29, 1979.

On August 16, 1979, the Supreme Court denied Respondents' petition to review this Court's Order of June 29, 1979 and denied Respondents' petition of June 27, 1979 to appeal from an interlocutory order.

On August 24, 1979, Respondents filed a motion styled "Plea in Bar, etc." which was dismissed by this Court after argument on September 4, 1979.

Respondents have appealed to the Supreme Court the dismissal of September 4, 1979.[6]

The appeals filed June 25, 1979 and September 4, 1979 are pending before the Pennsylvania Supreme Court.

The Petition for Imposition of Discipline alleges, *inter alia*, that

> (1) The Respondents Harry J. Oxman, Esquire and Ralph S. Levitan, Esquire are attorneys admitted to the practice of law in Pennsylvania;
>
> (2) From January 1966 through November 1969 Oxman and Edward L. Silverberg were, or held them-

5. No. 270, January Term 1979.

6. No. 369, January Term, 1979.

selves out to be, partners engaged in the practice of law;

(3) From December 1969 to December 1973, Oxman, Levitan and Silverberg were, or held themselves out to be, partners engaged in the practice of law;

(4) William Jordan, Warren Scruggs, Edwin Rothman and others were associated with the firms of Silverberg and Oxman and/or Silverberg, Oxman and Levitan, and acted on their behalf from 1966 through 1972 in soliciting personal injury claim retainers from Callie T. Brown, Carrie Pitts, Alverta O'Kelly, Thaddeus S. Thomas, Virginia Patterson, Gloria Poole, Kenneth E. Harris, Jr., George Mitchell, Debbie E. Turner, James DeLoach, Waverly and Martha Wyche, Michael Canady, Soynal Harrison, James Babb, Ernest Perry, Durham Johnson, William Bailey, Matthew Vann, Michael Babiarz, Nathaniel Cofield.

(5) During the period 1966 through 1971, the Respondents submitted exaggerated, inflated and fraudulent medical claims to the insurance carriers against whom they were pursuing claims for personal injuries on behalf of their clients Carrie Pitts, Thaddeus S. Thomas, Virginia Patterson, Gloria Poole, Debbie E. Turner, James DeLoach, Michael Canady, Soynal Harrison, Ernest Perry, Durham Johnson, Ercil M. Whittington, Sheila Henderson.

(6) During the period 1969 through 1971, the Respondents filed Contingent Fee Agreements containing false information with respect to their clients Carrie Pitts, Alverta O'Kelly, Thaddeus S. Thomas, Virginia Patterson, Gloria Poole, Kenneth E. Harris, Jr., George Mitchell, Debbie E. Turner, James De-

Loach, Michael Canady, Soynal Harrison, William Bailey, and Nathaniel Cofield.

(7) In 1972 the Respondents attempted to impede the Special Judicial Investigation authorized by the Court of Common Pleas by requesting that George Mitchell, Debbie E. Turner, Elsie Drayton, Gloria Poole, Waverly Wyche, Matthew Vann give false testimony when they appeared as witnesses pursuant to said Investigation.

For a period of seven days, from September 4 through September 13, 1979, a hearing on the Petition for Imposition of Discipline was held before the Special Disciplinary Court. The panel heard the testimony of fifty-two witnesses, including both Respondents. Subsequently, both sides submitted requested findings of facts and briefs.

On April 10, 1980, the Special Disciplinary Court heard oral argument and took the matter under advisement.

The Court now makes the following Findings of Fact and Conclusions of Law with respect to those charges which have been proved by a preponderance of the evidence:

## II. Findings of Fact

### A. Generally

1. Respondent, Harry Oxman, Esquire, ("Oxman") is an attorney admitted to the practice of law in the Commonwealth of Pennsylvania.

2. Respondent, Ralph S. Levitan, Esquire, ("Levitan") is an attorney admitted to the practice of law in the Commonwealth of Pennsylvania.

3. In September, 1964, Oxman entered into a partnership with Edward Silverberg, ("Silverberg").

4. In June, 1969, Levitan joined the firm of Oxman and Silverberg as an associate. He became a ⅙ partner on January 1, 1970.

5. The firm of Silverberg, Oxman and Levitan terminated in 1974.

6. Oxman and Levitan are presently engaged in the practice of law in Philadelphia.

7. William Jordan ("Jordan") was employed by the firm of Oxman and Silverberg in 1965. His designation was "part-time investigator." His employment was terminated in October, 1972. Jordan, at all times relevant was employed at or operated an autobody shop in Philadelphia. He had in his car a telephone and a radio capable of receiving police broadcasts. The law firm paid him $150. per week. No records were ever kept of the number of hours he worked.

8. Milton D. Soiferman, Esquire, ("Soiferman") is an attorney and was employed by Respondents.

9. Dr. Leonard W. Johnson ("Dr. Johnson") and Dr. Edwin Rothman ("Dr. Rothman") are physicians to whom Oxman and/or Levitan and/or Jordan referred clients of Respondents.

B. SOLICITATION

a. *Callie T. Brown* (Charge I):

10. Callie Brown ("Mrs. Brown") was a passenger on a bus travelling with her mother and sister to visit her retarded brother at Cressen State Hospital when the bus skidded on an icy highway and crashed on Sunday, February 13, 1972, in Johnstown, Pennsylvania.

11. Mrs. Brown was injured and was taken to Mercy Hospital where she was admitted. She was discharged

the following Monday at about noon time and returned home late that night.

12. The Monday following the accident, Nathan Brown ("Mr. Brown") was home when he received an unexpected visit from Jordan. Mr. Brown knew Jordan but had not seen him for four or five years and Jordan had never visited at the house before.

13. Jordan told Mr. Brown that he (Jordan) had seen Mrs. Brown's name in the newspaper reports of the accident.

14. Jordan told Mr. Brown that if he needed a lawyer he (Jordan) could contact one "for those type of cases," and he left his address and telephone number.

15. When Mrs. Brown arrived home, Mr. Brown told her that Jordan had come to the house and said ". . . he would get us a good lawyer and we could get plenty of money."

16. Mr. Brown telephoned Jordan who drove to the Browns' house and then took them to see Respondent Oxman even though he had first mentioned Levitan.

17. When Jordan met Mrs. Brown he told her ". . . that he had a good lawyer and he could get us a lot of money." The Browns then retained Respondent Oxman.

b. *Carrie Pitts* (Charge II):

18. On July 23, 1969, Carrie Pitts ("Pitts") boarded a SEPTA trolley at 52nd and Chester Avenue with her two children, then four and six years old. An altercation occurred between Pitts and the female trolley car operator over the amount of the fare and a supervisor was summoned.

19. A stranger, Jordan, either approached her at the trolley or at her house immediately after the incident.

20. Jordan told Pitts to see Dr. Rothman and Respondent Levitan. Jordan gave Pitts Levitan's card and on the reverse side wrote Dr. Rothman's name and address and the time she should see Levitan the following day.

21. On the following day, Pitts saw Respondent Levitan and she showed Levitan the card given to her by Jordan and told him about the incident.

c. *Alverta O'Kelly* (Charge III):

22. Alverta O'Kelly ("O'Kelly"), who was pregnant at the time, and her two year old son were passengers in a Yellow Cab which was involved in an accident at 52nd Street and Springfield Avenue in Philadelphia on a Friday evening, July 9, 1971 at or about 7:30 P.M.

23. A couple of days after the accident, a stranger, Jordan, appeared at O'Kelly's house.

24. Jordan told O'Kelly that he had seen the accident, that he knew the cab driver, that the cab driver could not operate a stick shift vehicle, that he (Jordan) worked in the offices of good lawyers and asked whether she would be interested in a lawyer.

25. Jordan gave O'Kelly a card which had on it Respondent Oxman's name, telephone number of the office and Jordan's name.

26. O'Kelly used the telephone number on the card and arranged an appointment to see Respondent Oxman.

27. Approximately 10 days after the accident, O'Kelly went to Respondent Oxman's office and discussed the accident with him.

d. *Thaddeus Thomas* (Charge IV):

28. Thaddeus Thomas ("Thomas") was injured in an accident on Saturday afternoon on September 5, 1970.

29. While Thomas was seated in the hospital waiting room, a stranger, later identified as Jordan, engaged him in conversation and asked him why he was there. Thomas told Jordan about the accident and Jordan asked if he was "planning on a case and did he have a lawyer."

30. Jordan gave Thomas a card with Oxman's name and telephone number and Thomas made an appointment to see Oxman. In the telephone conversation, Oxman asked Thomas who referred him and Thomas said Jordan had done so.

31. On September 8, 1970, Jordan drove Thomas to Oxman's office.

e. *Virginia Patterson* (Charge V) and *Gloria Poole* (Charge VI):

32. Virginia Patterson ("Patterson") and Gloria Poole ("Poole") were passenger in an automobile operated by Richard Dorsey ("Dorsey") which was involved in an accident at 16th and Vine Streets, Philadelphia, on a Sunday morning, March 30, 1969 at or about two o'clock A.M.

33. Patterson was ". . . bruised up a little bit" and Poole suffered injuries to her lower back and leg.

34. While in the waiting room at Hahnemann Hospital, a stranger, Jordan, approached Patterson, Poole and Dorsey approximately one-half hour after they arrived.

35. Jordan asked whether they were the people involved in an accident at 16th and Vine Streets. Poole replied "yes."

36. Jordan then asked whether they had a lawyer, whether they had thought about getting a lawyer and whether they had thought about suing. They said "no."

37. Jordan then said: "If you would like, I could recommend a lawyer to you."

38. Patterson, Poole and Dorsey discussed whether they wanted a lawyer and then told Jordan that they did.

39. Jordan offered to take them to see a lawyer the next day and they agreed to accept the offer.

40. Jordan gave them a card with his name on it. Poole took the card and put it in her pocketbook. Poole gave Jordan her telephone number and Jordan said he would call her.

41. While at the hospital, Poole telephoned a friend, Samuel Cole ("Cole"), who drove to the hospital and then drove them to the police station and home.

42. The next day, Monday, Jordan telephoned Poole and made arrangements to pick up Poole and Cole, who was at her house.

43. Poole telephoned Patterson to tell her that Jordan would also pick her up.

44. Jordan arrived in his car and picket up Poole, Cole and Patterson and drove them to the lawyer's office located in the Windsor Building, where he dropped them off, after telling them the floor and room number of the lawyer's office.

45. Jordan's car had a telephone in it.

46. Poole, Patterson and Cole went to the floor and room number mentioned by Jordan and entered the law offices of Respondents.

47. They met with Soiferman.

f. *Kenneth E. Harris, Jr.* (Charge VII):

48. Kenneth Harris ("Harris") was involved in an automobile accident on October 21, 1970.

49. Harris, who knew Jordan was in the auto body repair business, telephoned Jordan and then went to his body shop for a damage estimate.

50. While at the body shop, Jordan asked Harris if he had a lawyer and Harris then asked if Jordan knew of anyone. Jordan mentioned Oxman and then telephoned Oxman and made an appointment for Harris.

g. *George Mitchell* (Charge VIII) and *Debbie E. Turner* (Charge IX):

51. George Mitchell ("Mitchell") and Debbie Turner ("Turner") were passengers in a Yellow Cab which was involved in an accident on November 23, 1969 at 59th and Walnut Streets in Philadelphia.

52. On November 24, 1969, a stranger, Jordan, went to Mitchell's house and was let in by Mitchell's grandmother.

53. Jordan identified himself, mentioned the accident and asked whether Mitchell needed a lawyer. Mitchell said he "really didn't know." Jordan said he had tried to telephone Turner, but had been unable to contact her. Jordan mentioned Oxman's name. Mitchell agreed to accompany Jordan to the lawyer's office and telephoned Turner to ask her if she wanted to go also.

54. Jordan drove Mitchell to Turner's house where they picked her up and then went to Oxman's office.

55. Before Jordan contacted them, neither Mitchell nor Turner had any thought of getting a lawyer.

56. Turner and Mitchell discussed the accident with Oxman.

h. *James DeLoach* (Charge X):

57. James DeLoach ("DeLoach") was involved in an automobile accident involving his car, a bus and a parked

vehicle at 58th and Carpenter Streets in Philadelphia on May 5, 1969.

58. Jordan appeared unexpectedly at the accident scene and talked to both DeLoach and the owner of the parked vehicle. Deloach had known Jordan before the accident.

59. Jordan gave DeLoach a card with Levitan's name and told him to go see the lawyers "because they were pretty good." In his prior testimony on January 30, 1973, DeLoach remembered telling Jordan that he wanted and needed a lawyer.

i. *Waverly and Martha Wyche* (Charge XI):

60. Waverly Wyche ("Wyche") was operating his car in which his wife and two children were passengers and which was involved in an accident at 58th Street and Lindbergh Avenue in Philadelphia on a Saturday in 1966.

61. The Monday following the accident a stranger, Jordan, came to Wyche's house and asked whether anyone had seen a doctor and whether he wanted a lawyer.

62. Wyche had never before used a lawyer but was thinking of doing so because the woman driver of the striking vehicle only offered "a lousy ten dollar bill" for the damages.

63. Wyche told Jordan he wanted a lawyer and Jordan gave him a card with Respondent Oxman's name, address and telephone number. Jordan told Wyche to see Oxman and everything would be taken care of.

64. Wyche telephoned Oxman for an appointment and subsequently went into the law office.

j. *Michael Canady* (Charge XII):

65. Michael Canady ("Canady") was operating an automobile on March 8, 1971 and was involved in an acci-

dent at 55th and Pine Streets in Philadelphia. His future sister-in-law, Soynal Harrison, ("Harrison") was a passenger.

66. Canady telephoned Jordan, who was an acquaintance of Harrison, in order to have Jordan tow and repair the damaged automobile.

67. Jordan asked Canady whether he had a lawyer and then referred Canady to Respondent Levitan.

68. Jordan drove Canady and Harrison to Levitan's office, where they executed Contingent Fee Agreements dated March 10, 1971.

C. Filing False Contingent Fee Agreements ("CFA's") in the Court of Common Pleas

a. *Carrie Pitts* (Charge XXXIII) (See supra p. 11)

69. Respondent Levitan gave Pitts a CFA which she signed; however, the handwriting in the referral section is not hers and was not on the agreement when executed by her.

70. The CFA falsely identifies the referral source as Dr. Rothman and falsely states that he is a "friend." Respondents filed the CFA in the Court of Common Pleas of Philadelphia County.

b. *Alverta O'Kelly* (Charge XXXIV) (See supra pp. 11-12)

71. Respondent Oxman gave O'Kelly a Contingent Fee Agreement which she signed. However, the referral section was blank at the time. During the meeting, O'Kelly told Oxman she was referred by Jordan and showed him the card given to her by Jordan.

72. Respondent Oxman subsequently filed the CFA in the Court of Common Pleas of Philadelphia County

which falsely identified the referral party as "Edwin Rothman, friend."

c. *Thaddeus S. Thomas* (Charge XXXV) (See supra pp. 12-13)

73. Thomas met with Oxman and told him that he (Thomas) had been referred by Jordan who had given him Oxman's card. Thomas signed a retainer agreement (CFA); however, the referral section on the CFA filed (P-19) falsely states that he was referred by George Braxton.

74. Respondents filed the false CFA with the Court of Common Pleas of Philadelphia County.

d. *Virginia Patterson* (Charge XXXVI) and *Gloria Poole* (Charge XXXVII) (See supra pp. 13-15)

75. After the first meeting with Soiferman, all subsequent meetings that Poole and Patterson had in the law office were with Oxman.

76. Soiferman asked who recommended them to the law firm and Patterson said Jordan had done so.

77. Soiferman said "No" to Jordan's name as referrer on the CFA and said "No, we will let Mr. Cole be the one."

78. Although Cole was present, he did not say anything.

79. Neither Poole nor Patterson ever identified Cole as the person who referred them to the law firm.

80. During the meeting with Soiferman, Poole signed the CFA dated March 31, 1969 (P-2) and Patterson remembers signing a CFA (P-11) but cannot now positively identify her signature.

81. Both P-2 and P-11 falsely identify Cole and not Jordan as the person who referred Poole and Patterson to Respondents' law firm. Both CFA's were filed by Respondents in the Court of Common Pleas of Philadelphia County.

e. *Kenneth E. Harris, Jr.* (Charge XXXVIII) (See supra p. 15)

82. Harris executed a retainer agreement (CFA) with Oxman dated October 24, 1970. The CFA falsely states that Harris was referred to Oxman by "Wallace Nash, employer."

83. Harris was employed by Wallace Nash, but Mr. Nash never referred him to Oxman. Oxman, in the first meeting, asked Harris for his employer's name and address.

84. Respondents filed the false CFA (P-39) in the Court of Common Pleas of Philadelphia County.

f. *George Mitchell* (Charge XXXIX) and *Debbie E. Turner* (Charge XL) (See supra pp. 15-16)

85. Oxman gave Mitchell and Turner retainer agreements (CFA's) to sign.

86. Turner recalls Oxman asking her how she was referred. She though Jordan referred her because he took her to Oxman's office.

87. Turner signed the CFA dated November 24, 1969 but at the time the referral section was blank. The referral section which states that she was referred by "George McGraw, friend" is not true as she knows no one by that name.

88. Mitchell signed the CFA dated November 24, 1969; however, he is not familiar with the name "George McGraw" and the designation "friend" which appears in

the referral section of said agreement. He does not know any person named George McGraw.

89. Respondents filed the Turner and Mitchell CFAs (P-17 and P-14, respectively) in the Court of Common Pleas of Philadelphia County.

g. *James DeLoach* (Charge XLI) (See supra p. 16)

90. The day after the accident, DeLoach met Levitan and was given a CFA to sign (P-47) dated May 6, 1969. The referral section on the CFA falsely states that DeLoach was referred by "self."

91. Respondents filed the CFA (P-47) in the Court of Common Pleas of Philadelphia County.

h. *Michael Canady* (Charge XLII) (See supra pp. 17-18)

92. The CFA (P-5) executed by Canady in Respondent Levitan's office falsely states that he was referred to Levitan by "Edwin Rothman, friend," but Canady does not remember this information being on the CFA when executed by him.

93. The false CFA was filed by Respondent in the Court of Common Pleas of Philadelphia County.

i. *William Bailey* (Charge XLIV):

94. William Bailey ("Bailey") was operating his car and was involved in an automobile accident on July 6, 1970 at 54th and Kingsessing Streets in Philadephia.

95. The following day, Bailey went to his insurance agent, Warren Scruggs ("Scruggs"), to report the accident.

96. Scruggs told Bailey that his insurance company would furnish an attorney for Bailey.

97. Scruggs gave Bailey his (Scruggs') card and on the back of it wrote Respondent Levitan's name and provided directions to his office.

98. While Bailey was in Scruggs' office, Scruggs telephoned Levitan and made an appointment for Bailey that afternoon.

99. Bailey went to see Levitan and was given a CFA to sign.

100. At the time he signed the CFA, the referral section was not filled in and the handwritten word "self" which appears in the retainer agreement is not his.

101. Bailey did not know Levitan before being referred by Scruggs.

102. Levitan filed the false CFA (P-15) in the Court of Common Pleas of Philadelphia County.

D. Attempting to Impede the Special Judicial Investigation

a. *George Mitchell* (Charge XLVI) and *Debbie E. Turner* (Charge XLVII) (See supra pp. 15-16, 21)

103. At or about the time when a newspaper article appeared mentioning the arrest of Dr. Johnson on charges of fraud and shortly before her appearance as a witness before Judge Shoyer on June 6, 1972, Turner received a telephone call from Oxman who asked whether she had seen the article.

104. In this telephone conversation, Oxman advised her not to worry about the problem with Dr. Johnson and told her someone might come to question her. If she was questioned, Oxman told her to say she was referred to Dr. Johnson by a friend and if she was asked how she was referred to him (Oxman) she should say by a friend, McGraw, a man she met at a party.

105. The answers Oxman told Turner to make were untrue.

106. After the telephone conversation with Oxman, a detective questioned her at her house.

107. On June 29, 1972, in connection with her personal injury claim, Turner was deposed and testified falsely that she was referred to Dr. Johnson by a friend and did so because of Oxman's request.

108. On May 17, 1972, Mitchell testified before Judge Shoyer in the Special Judicial Investigation proceedings.

109. Shortly before his testimony, he received a letter from Oxman telling him to come into the office for a deposition in his personal injury case.

110. When Mitchell arrived at Respondents' law office, he was advised that Oxman was in court and he spoke to Levitan who mentioned a newspaper article reporting the arrest of Dr. Johnson. Levitan told Mitchell to say that J. P. McGraw was a friend, and that a friend had referred him to Dr. Johnson.

b. *Elsie Drayton* (Charge XLVIII):

111. Elsie Drayton ("Drayton") was injured in an accident on June 4, 1967 and subsequently retained Respondent Oxman who settled her personal injury claim.

112. On or about August, 1972, she went to Oxman's office and he gave her a check (P-31) representing the settlement proceeds of her personal injury claim.

113. Drayton advised Oxman that she received a subpoena, which she showed him, in connection with the SJI proceedings. She was scheduled to appear as a witness that same day in the afternoon.

114. Oxman advised Drayton to falsely testify that she was referred to Dr. Rothman by a friend and not by Oxman.

115. Subsequently, Drayton testified in the Special Judicial Investigation proceedings before Judge Shoyer and, as directed by Oxman, falsely testified that a friend sent her to Dr. Rothman. She then recanted the false testimony and truthfully testified that Oxman referred her to Dr. Rothman.

c. *Gloria Poole* (Charge XLIX) (See supra pp. 13-15, 19-20)

116. After Poole's case was settled, she was subpoenaed to testify before the Special Judicial Investigation in 1972.

117. After Poole was subpoenaed and before she testified in those proceedings, Oxman telephoned her and arranged a meeting in his office.

118. In the meeting between Oxman and Poole, he told her ". . . not to use Mr. Jordan's name; you know, to use Samuel Cole's name as agreed on the paper" and Oxman ". . . said somebody might feel he was soliciting."

d. *Waverly Wyche* (Charge L) (See supra p. 17)

119. In or about 1972, Wyche was interviewed by Detective Ray Bell in connection with the Special Judicial Investigation and he received a subpoena to appear as a witness before Judge Shoyer.

120. Wyche told Detective Bell that he was referred to Respondents by Jordan.

121. Wyche subsequently telephoned Respondents' law office, possibly because the court date on the subpoena conflicted with a dental appointment. Wyche is unsure who changed the court date, but it was either Oxman or Levitan. When Wyche testified in July, 1972, he said he spoke to Oxman *on the telephone*; however, Wyche now states that he is not sure whether it was Oxman or Levitan.

122. Before Wyche testified before Judge Shoyer in July, 1972, he met with Levitan who advised him to falsely testify and say he was referred by friends, and not Jordan.

123. Wyche subsequently testified falsely before Judge Shoyer and stated he was referred to Respondents by friends and did so because of Levitan's advice. Wyche then recanted his false testimony and truthfully said that Jordan was the referral source.

e. *Matthew Vann* (Charge LI):

124. On Saturday morning, July 11, 1970, Matthew Vann ("Vann") was involved in an automobile accident with one Emmit Abner.

125. On the following Monday, Vann contacted his insurance agent, Scruggs.

126. On Tuesday, Vann and Abner met with Scruggs.

127. Scruggs asked Vann and Abner if they had been injured in the accident. When they replied in the affirmative, Scruggs said that he would send them to a lawyer so that they would be compensated for their injuries.

128. On July 14, 1970, Vann and Abner met with Levitan. Vann signed a CFA. The name Warren Scruggs was not on the CFA when Vann signed it.

129. Thereafter, at a later meeting, Vann spoke with Levitan about the testimony that he (Vann) had given before Judge Shoyer on April 26, 1972.

130. On direct examination, Vann testified that this conversation took place after he testified. On cross-examination, Vann recalled that the conversation had taken place before he testified.

131. This conversation was prompted by a letter from Levitan to Vann asking Vann to come into his office.

132. Vann told Levitan that he had been subpoenaed in connection with the Special Judicial Investigation and that the subpoena had been served after the date that he was to appear.

133. Although Vann had been question by an investigator, he told Levitan that he had not.

134. Levitan told Vann that if he was subsequently asked about how he had come to retain the firm, he was not to say that he had been referred by Scruggs. Instead, Levitan told Vann to say that he had first asked Scruggs to recommend a lawyer and that it was only then that Scruggs had recommended Levitan.

## III. Conclusions of Law

### A. Solicitation:

We conclude that Petitioner has proved by a preponderance of the evidence that Respondents Oxman and Levitan solicited clients and their claims through William Jordan (Jordan) in violation of Disciplinary Rule 2-103(A) and Rule 1-102(A)(2) of the Code of Professional Responsibility and Canons 27 and 28 of the Canons of Ethics in each of the following cases:

Callie T. Brown (Charge I)
Carrie Pitts (Charge II)
Alverta O'Kelly (Charge III)
Thaddeus Thomas (Charge IV)
Virginia Patterson (Charge V)
Gloria Poole (Charge VI)
Kenneth E. Harris, Jr. (Charge VII)
George Mitchell (Charge VIII)
Debbie E. Turner (Charge IX)
James DeLoach (Charge X)
Waverly and Martha Wyche (Charge XI)
Michael Canady (Charge XII)

B. Filing False Contingent Fee Agreements (CFAs) in the Court of Common Pleas

We conclude that Petitioner has proved by a preponderance of the evidence that Respondents Oxman and Levitan used false names and false relationships in the retainer agreements filed in the Court of Common Pleas of Philadelphia County regarding the source of client referrals in violation of Disciplinary Rules 1-102(A)(4), (5) and (6) of the Code of Professional Responsibility, which prohibits conduct involving dishonesty, fraud, deceit or misrepresentation, conduct that is prejudicial to the administration of justice and any other conduct that reflects adversely on fitness to practice law, in each of the following cases as set forth below:

Carrie Pitts (Charge XXXIII)
Alverta O'Kelly (Charge XXXIV)
Thaddeus S. Thomas (Charge XXXV)
Virginia Patterson (Charge XXXVI)
Gloria Poole (Charge XXXVII)
Kenneth E. Harris, Jr. (Charge XXXVIII)
George Mitchell (Charge XXXIX)
Debbie E. Turner (Charge XL)
James DeLoach (Charge XLI)
Michael Canady (Charge XLII)
William Bailey (Charge XLIV)

C. Attempting to Impede the Special Judicial Investigation

We conclude that Petitioner has proved by a preponderance of the evidence that Respondents counseled and requested clients and former clients to testify falsely when they appeared before Judge Shoyer in the Special Judicial Investigation and thereby impeded said investiga-

tion in violation of Disciplinary Rules 1-102(A)(4)(5) and (6) of the Code of Professional Responsibility in each of the following cases:

George Mitchell (Charge XLVI)
Debbie E. Turner (Charge XLVII)
Elsie Drayton (Charge XLVIII)
Gloria Poole (Charge XLIX)
Waverly Wyche (Charge L)
Matthew Vann (Charge LI)

D. Submitting False Medical Claims

The evidence was insufficient to sustain this charge in any individual case.

## IV. Discussion

### A. Sufficiency of Evidence

#### 1. *Submitting False Medical Claims*

Respondents were charged with submitting medical statements which they knew or should have known were fraudulent in violation of the Canons of Ethics and in violation of Disciplinary Rules 1-102(A)(4), (5) and (6) of the Code of Professional Responsibility, which prohibits conduct involving dishonesty, fraud, deceit or misrepresentation, conduct that is prejudicial to the administration of justice and any other conduct that adversely reflects on fitness to practice law. We find insufficient evidence to sustain this charge in any individual case.

#### 2. *Solicitation, False CFAs, Impeding Investigation*

This is a case in which, if each particular item of evidence were examined individually, there might be an argument as to the conclusions to be drawn from it, but here the items taken collectively establish a clear and obvi-

ous pattern. We are convinced by a preponderance of the evidence which is clear and satisfactory that (1) William Jordan solicited cases for the Respondents with their knowledge and consent; (2) in some of the cases the Respondents knowingly filed false documents with the Prothonotary; and (3) on some occasions the Respondents attempted to impede an official investigation by suggesting to their clients that they give false testimony. A full grasp of this case, we believe, can be gained only by reading our Findings of Fact. Our intent in this discussion is only to point to some highlights.

We hardly think it necessary to discuss in detail the evidence as to the ubiquitous Mr. Jordan. The Petitioner's testimony shows that at least twelve clients were directly steered to the Respondents by Mr. Jordan. His conduct was more than simple recommendation. In the case of Callie Brown for instance, he saw a report of an accident in the newspapers and went to the home of one of the persons reported as injured and secured her as a client for the Respondents. On another occasion, he stopped at the scene of a cab accident and secured an injured person as a client. On still another occasion, he appeared at a hospital early in the morning hours and secured clients for the Respondents. During this time, according to the Respondents' own testimony, he was employed by them as an investigator. Mr. Jordan had in his car a radio which could receive police broadcasts. He also had a telephone in his car. He was paid $150 per week, but no records were kept of the number of hours he worked. On at least four occasions, he actually drove prospective clients in his car to the Respondents' office.

Soliciting has been defined in both the Canons of Ethics and the more recent Code of Professional Responsibility. Most of the unethical solicitation in this case occurred after January 1, 1970, the effective date of the

Code of Professional Responsibility and is, therefore, governed by it. Several cases predate January 1, 1970, and are, therefore, governed by the Canons of Ethics.

Canon 27 of the Canons of Professional Ethics provides in general that "It is unprofessional to solicit professional employment . . . through touters." Canon 28 provides "It is unprofessional for a lawyer to volunteer advice to bring a lawusit . . . . It is disreputable to . . . breed litigation by seeking out those with claims for personal injuries . . . or to employ agents or runners for like purpose."

The Code of Professional Responsibility defines more specifically unethical solicitations. Disciplinary Rule 2-103(A) provides generally that a lawyer shall not recommend his own employment to a non-lawyer who has not sought his advice regarding employment of a lawyer. While this section is directed at the lawyer himself, it cannot be circumvented through the action of another. Disciplinary Rule 1-102(A)(2). See also E.C. 2-3 and E.C. 2-8.

We recognize that the distinction between unethical soliciting and legitimate obtaining of clients may be a fine one. In this case, it was urged that in addition to Mr. Jordan, business was solicited for Respondents by Warren Scruggs, Dr. Edwin Rothman and others. Because of the relatively few incidents involving these other sources of business, we have resolved the issue of solicitation as to these incidents in favor of the Respondents.

Insofar as Mr. Jordan is concerned, however, there can be no doubt of his role as a solicitor for the Respondents. We believe, moreover, that the record contains clear and convincing evidence of the fact that his solicitation was done with the knowledge and consent of the Respondents. As spelled out in our Findings of Fact, in some instances he brought clients to the Respondents' office and intro-

duced them to the Respondents. Moreover, it is clear that the Respondents were very reluctant to have his name appear on Contingent Fee Agreement signed by clients. On at least nine occasions, the Respondents suggested to clients that the name of a person other than Mr. Jordan be filled in as the referrer. In the Gloria Poole case, Respondent Oxman even stated to the client that he did not want any suspicion of solicitation to arise. Finally, once the investigation of the Respondents commenced, they made efforts to minimize mention of Mr. Jordan's name by suggesting to clients that they mislead the investigator as to the source of their referral to Respondents in at least two cases, the Gloria Poole and Wavery Wyche cases.

Although the Respondents in this case are not charged with failure to file documents as required by the Rules of Court, we note that until the end of 1971 it was the policy of the Respondents not to file Contingent Fee Agreements with the Prothonotary despite the fact that former Philadelphia Civil Rule 202(f) required them to do so.[7]

Upon threat by the President Judge of the imposition of penalties for violation of the Rule, the Respondents in December, 1971, filed 233 Contingent Fee Agreements at once. The record establishes that at least eleven Contingent Fee Agreements filed by the Respondents contained false information, principally false statements as to referral sources. These instances involve both substitution of some other name for that of Mr. Jordan or, as in the case of Carrie Pitts, false designation of a physician as a friend.

Finally, it is clear from the record that once an investigation of their practices was instituted, they at least on one occasion encouraged clients to make false statements to the investigator. Particularly, Respondents encouraged clients to conceal that Mr. Jordan secured them

7. Local Rule 202(f) was in effect from 1968 to 1976.

as clients. It further appears that Respondents made a systematic effort to get clients who were potential witnesses in the investigation to contact the Respondents prior to testifying.

As we have already noted, we have resolved doubts on the charges of knowingly submitting inflated medical bills in favor of the Respondents. The record shows that it was not the policy of the Respondents to discuss the amount of the medical bills or attempt to verify their accuracy with clients. We do not believe, however, that they had a legal obligation to do so although there is little doubt that the Respondents were sensitive on the matter of their relationship with certain physicians. This is evident from the fact that they, on occasion, attempted to hide the connections by failing to name the physician as referrer or discouraging clients from revealing that the Respondents had sent the client to a particular physician. In the one instance in which Petitioner argues that Respondents acknowledged to a client that the medical bill had been exaggerated by the physician, there is disagreement between the Petitioner and the Respondents as to the actual words used. We resolve this doubt in favor of the Respondents.

B. Additional Legal Issues

In their Preliminary Objections filed May 23, 1979, which were dismissed by this panel after receiving briefs and hearing oral argument, the Respondents raised three issues: (1) the lack of jurisdiction of the Special Disciplinary Court; (2) the delay in rescheduling the hearing; (3) fairness and impartiality of the Court.

1. *Jurisdiction*

The Respondents contended that the instant disciplinary matter is governed by the 1972 Rules of Disciplinary

Enforcement of the Supreme Court of Pennsylvania, and that President Judge Bradley had no authority to appoint a new Special Disciplinary Court. Supreme Court Rule 17 pertaining to the establishment and organization of a new disciplinary system became effective March 21, 1972. However, Rule 17-25 specifically provided:

> "These Rules shall not apply to any special judicial investigation in existence at the time of the adoption of these Rules, which, together with any disciplinary proceedings arising therefrom, shall be concluded under the procedure established for the conduct of such investigation."

The Special Judicial Investigation out of which the instant charges arose commenced in 1971. The procedures ordered by President Judge Jamieson received the approval of the Supreme Court in *In the Matter of Shigon*, 462 Pa. 1, 329 A.2d 235 (1974). This matter is therefore not covered by Rule 17. *See In the Matter of Shigon, Id.* at 9.

The Supreme Court of Pennsylvania acknowledged the continuing jurisdiction of the Court of Common Pleas of Philadelphia when, on October 3, 1975, it remanded the instant matter for a new hearing.

Thereafter, President Judge Bradley had the right to order prosecution of the case resumed and having done so, he was mandated by a fair reading of the Supreme Court's opinion to appoint a new Special Disciplinary Court.

The new Special Disciplinary Court did therefore have jurisdiction of the instant matter.

2. *Delay in Rescheduling Hearing*

The Respondents contended that the Petition for Imposition of Discipline against them should have been dis-

missed because their constitutional rights have been violated as a result of the delay in scheduling a new hearing.

The delay between the Supreme Court's order of remand on October 3, 1975 and Judge Bradley's order of July 13, 1978, was caused by inadvertence. Special Counsel, William P. Stewart, requested to withdraw from the case because of other commitments by letter dated November 12, 1975; [8] Judge Bradley became involved with reorganization of the Philadelphia court administration staff; [9] and Respondents never requested that a date for the rehearing be set, or, until May 23, 1979, that the charges be dismissed.

While the delay is indeed most unfortunate, we hold that it has not caused a violation of Respondents' constitutional rights, so as to require dismissal of the Petition.

In *Office of Disciplinary Counsel v. Campbell*, 463 Pa. 472, 345 A.2d 616 (1975), the Supreme Court of Pennsylvania set forth the touchstone by which constitutional attacks on disciplinary proceedings are to be evaluated:

> "In *In Re Echeles*, 430 F.2d 347, 349-50 (7th Cir. 1970), the court presented a lucid explanation of the purpose of a disciplinary action: '[D]isbarment and suspension proceedings are neither civil nor criminal in nature but are special proceedings, sui generis, and result from the inherent power of courts over their officers. Such proceedings are not law suits between parties litigant but rather are in the nature of an inquest or inquiry as to the conduct of the respondent. They are not for the purpose of punishment, but rather seek to determine the fitness of an officer

8. Memorandum in Support of Petitioner's Answer to Respondents' Objections, Exhibit "B", Letter of November 12, 1975, from William P. Stewart to Edward J. Bradley.

9. *Id.*, unlettered Exhibit, Letter of May 4, 1979, from Edward J. Bradley to John W. Herron.

> of the court to continue in that capacity and to protect the courts and the public from the official ministration of persons unfit to practice. Thus the real question in issue in a disbarment proceeding is the public interest and an attorney's right to continue to practice the profession imbued with the public trust.' (Citation omitted.) *Accord In Re Berlant,* — Pa. —, —, 328 A.2d 471, 473 (1974).
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> "We need only add that although disciplinary proceedings are sui generis, they have been styled 'quasi-criminal.' *In Re Ruffalo,* 390 U.S. 544, 551, 88 S.Ct. 1222, 20 L.Ed. 117 (1968). As such certain procedural and substantive rights have necessarily attached themselves to those proceedings . . . ." *Id.,* 345 A.2d at 619-20.

It has been held that the lawyer against whom discipline is sought must be advised of the nature of the charges, *In Re Ruffalo,* 390 U.S. 544, 551, 20 L.Ed. 117, 88 S.Ct. 1222 (1968); and he or she can assert the Fifth Amendment privilege against self-incrimination, *Spevack v. Klein,* 385 U.S. 511, 17 L.Ed. 2d 574, 87 S.Ct. 625 (1967).

However, not all constitutional rights afforded defendants in criminal cases apply to disciplinary proceedings. For instance, the standard of proof required for sustaining disbarment is "by a preponderance of the evidence," rather than "beyond a reasonable doubt." *In Re Berlant,* 458 Pa. 439, 328 A.2d 471, 473 (1974). Principles of res judicata and double jeopardy do not bar a disciplinary proceeding which follows the disposition of criminal charges, though based on substantially the same conduct. *Office of Disciplinary Counsel v. Campbell, supra. See, e.g., In Re Echeles,* 430 F.2d 347 (7th Cir. 1970); *Hawkins v. State Bar of California,* 23 C.3d 622

(1979); *In re Pennica*, 36 N.J. 401, 177 A.2d 721 (1962); *In re Browning*, 23 Ill. 2d 483, 179 N.E. 2d 14 (1961); *Maryland State Bar Association, Inc. v. Frank*, 272 Md. 528, 325 A.2d 718 (1974). Likewise, it has been held that the constitutional right to a speedy trial does not apply to disciplinary proceedings. *Maryland State Bar Association, Inc. v. Frank, supra; Bar Association of Baltimore City v. Posner*, 275 Md. 250, 339 A.2d 657 (1975), *cert. denied* 423 U.S. 1016; *In the Matter of O'Hara*, 63 A.D. 2d 500, 408 N.Y.S. 2d 70 (N.Y. App. Div. 1978).[10]

However, due process requirements may necessitate dismissal of disciplinary charges if delay has caused actual prejudice.

In *Wilhelm's Case*, 269 Pa. 416, 112 Atl. 560 (1921), there was a five year delay between institution of disbarment proceedings and the hearing, during which time the respondent continued to practice law. In affirming orders of disbarment, the Supreme Court held that "... the statute of limitations has no application to such case. . . . The delay was not so great as to warrant a dismissal of the rule on the ground of laches . . . especially as it inured to Respondent's benefit and in no respect resulted to his prejudice. . . ." *Id.* at 420-21.

In *Ullo v. State Board of Nurse Examiners*, 41 Pa. Cmwlth. 204, 398 A.2d 764 (1979), the Commonwealth Court affirmed the suspension of petitioner's nursing license, although there was almost a two year delay between the last alleged act of wrongdoing and the Citation and Notice of Hearing by the Board. During the interim,

10. Even if the right to a speedy trial did apply, it would be necessary for Respondents to show that they were prejudiced by the delay. *Barker v. Wingo*, 407 U.S. 514, 33 L.Ed.2d 101, 92 S.Ct. 2182 (1972); *Commonwealth v. Roundtree*, 469 Pa. 241, 364 A.2d 1359 (1976); *State Dental Council and Examining Board v. Pollack*, 457 Pa. 264, 274, 318 A.2d 910 (1974).

Ms. Ullo had obtained new nursing employment and had been promoted to a supervisory position. In rejecting her argument that the suspension proceedings were barred by laches and the Constitution, the court held that there had been no showing of harm or prejudice caused by the delay. She did not claim that the delay affected her ability to defend against the charges, nor did she contend that in reliance on the delay she altered her professional career.

In *State Dental Council and Examining Board v. Pollack, supra,* the Supreme Court rejected an argument that appellant was denied due process where there was a three year delay between alleged improper conduct and a suspension hearing before the Board, because no harm or prejudice was alleged.

In *State Board of Funeral Directors v. Pieslak,* 24 Pa. Cmwlth. 315, 355 A.2d 590 (1976), it was held that a funeral director was not denied due process by virtue of the fact that there was a 2½ year delay between the close of hearings and the Board's issuance of its adjudication suspending his license, where appellant continued to work, and he was not prejudiced by the delay.

In *In the Matter of O'Hara,* 63 A.D.2d 500 (N.Y. App. Div. 1978), it was held that the right to a speedy trial, statute of limitations and the doctrine of laches did not apply although nine years had elapsed between the first instance of wrongdoing and the institution of disbarment proceedings.

In *Caldwell v. State Bar of California,* 13 C.3d 488, 119 Cal. Rptr. 217, 531 P.2d 785 (1975), petitioner asserted he was deprived of due process of the law by the nine year delay between the filing of the complaint against him and the issuance of the notice to show cause. (Eight hearings were then held, and the local administrative committee of the state bar did not issue its findings and con-

clusions until almost a year later). The Court held "that any unreasonable delay which may have occurred is neither a denial of due process of law . . . nor a jurisdictional defect . . . . '[M]ere lapse of time is no defense unless *specific* prejudice is shown' . . . ." *Id.* at 496.[11]

In the instant matter the Respondents have not alleged that they were prejudiced by the delay in any specific way. They asserted only that memories may have dimmed and they are older and less able to pursue new careers if they should be disbarred.

These same arguments were considered and rejected by the Supreme Court of California in *Caldwell, supra.* In that case the Court said:

> "Petitioner fails to show specific prejudice within the meaning of the foregoing rule. He asserts only that 'the passage of time dulls the memory. Witnesses were either unavailable or unable to recollect . . . .' These 'witnesses,' however, are not further identified. Such vague generalizations are manifestly insufficient to discharge his burden." *Id.* at 496.
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> "Petitioner also contends he was 51 years of age in 1963 when these proceedings were initiated, that he is now 63, and that at this age he is handicapped in undertaking any new enterprises in lieu of practicing law. He thus argues the delay is indeed prejudicial. While we do not approve of any dilatoriness by the State Bar . . . , we point out petitioner had as a compensating factor the benefit of those 12 uninterrupted years of law practice." *Id.* at 496, n.9.

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11. In California, delay in holding disciplinary proceedings is a factor to be considered in mitigation of the penalty. *Caldwell, supra; Hawkins v. State Bar of California,* 23 C.3d 622, 153 Cal. Rptr. 234, 591 P.2d 524 (1979).

Because Respondents have no constitutional right to a speedy trial, they have alleged no specific prejudice caused by the delay, the delay was inadvertent, and because Respondents never acted affirmatively to bring about a more expeditious resolution of the matter, this Court refused to dismiss the Petition for Imposition of Discipline as a result of said delay.

3. *Impartiality of Court*

Finally, the Respondents contended that they would be unable to obtain a fair hearing because all Pennsylvania judges have been prejudiced by knowledge of the improper testimony admitted at the first hearing in 1973, which caused the Supreme Court to reverse the decision of the former Special Disciplinary Court.

The charges against the Respondents were initially brought in 1972. The Supreme Court reversed with an opinion in 1974. A second reversal occurred in 1975, with an opinion.

Although the present members of the Special Disciplinary Court undoubtedly read the two Supreme Court opinions when they were published, none of us have any recollection of the content of those opinions.

In deciding the Preliminary Objections filed by the Respondents and in reaching a decision pursuant to the Petition for Imposition of Discipline, the members of this Court have refrained from reading the record of the first hearing, except where specifically admitted as evidence, and we have not read any material contained in pre-hearing motions or briefs which referred to substantive aspects of the prior hearing. Furthermore, we have not personally re-read the Supreme Court's opinion, *In the Matter of Silverberg, supra.*

The members of the presently constituted Special Disciplinary Court have no personal knowledge or recol-

lection of the nature of the testimony which was improperly admitted at Respondents' first hearing.

For the reasons set forth above, Respondents' Preliminary Objections were dismissed.

IMPOSITION OF DISCIPLINE

The undersigned members of the Special Disciplinary Court herein impose the following disciplinary action:

Harry J. Oxman is hereby suspended from the practice of law in the Commonwealth of Pennsylvania for one and one-half years, commencing September 15, 1980.

Ralph S. Levitan is hereby suspended from the practice of law in the Commonwealth of Pennsylvania for one year, commencing September 15, 1980.

August 6, 1980

LEVY ANDERSON
Anderson, *J.*
BULLOCK
Bullock, *J.*

Della Porta, *J.* dissents from the imposition of discipline and files a concurring and dissenting opinion.

IN THE
COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
SPECIAL DISCIPLINARY COURT

---

AUGUST TERM, 1972 No. D-27

---

HARRY J. OXMAN
and
RALPH S. LEVITAN

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CONCURRING AND DISSENTING OPINION.

DELLA PORTA, *J.*

I fully concur with the adjudication herein, but I am compelled to dissent as to the Imposition of Discipline. I don't believe that suspension for any period of time, however short, is appropriate as to either Respondent.

The improper conduct took place between 8 and 13 years ago. These proceedings have been a part of Respondents' lives for approximately 8 years, a fact which in itself amounts to substantial punishment.

After the original Special Disciplinary Court ordered a suspension for both Respondents and an appeal was taken, Respondent Levitan felt compelled by the resulting adverse publicity to withdraw and did in fact withdraw from the practice of law from the Fall of 1973 to the end of 1975. (N.T. 601-602) Respondent Oxman for the same reason withdrew from the practice from December 1973 to January 1975 (N.T. 919, 1013-1015). These voluntary acts do indicate that each Respondent did appreciate the scope of the impropriety of his conduct and did suffer additional punishment.

As we quoted from the Campbell case, supra, the purpose of these proceedings is not punishment but to determine the fitness of an officer of the court to continue in that capacity and to protect the public from the ministration of persons unfit to practice. I am satisfied that all that has transpired in the last 8 years in this matter has already accomplished that purpose.

I would therefore recommend that the Supreme Court impose Public Censure without probation upon each Respondent.

August 6, 1980

A. DELTA PORTA, *J.*
Armand Della Porta

## APPENDIX C

## Opinion of the Special Disciplinary Court

IN THE
COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
SPECIAL DISCIPLINARY COURT

AUGUST TERM, 1972 No. D-27

In re: HARRY J. OXMAN
and
RALPH S. LEVITAN

ANDERSON, *J.*, BULLOCK, *J.*, DELLA PORTA, *J.* July 30, 1979.

### OPINION

#### HISTORY

By an Amended Order dated October 28, 1971, the Honorable D. Donald Jamieson, the President Judge of the Court of Common Pleas of Philadelphia, established procedures for a special judicial investigation of allegations of unethical conduct by members of the Philadelphia bar.[1]

On September 6, 1972, a Petition for Imposition of Discipline was filed against Respondents Harry J. Oxman and Ralph S. Levitan. A trial on the merits was held and on July 16, 1973, the decision of a three-member Special Disciplinary Court of the Court of Common Pleas of Phila-

1. For a discussion of the history of that investigation and the contents of the Order of October 28, 1971, see *In the Matter of Shigon*, 462 Pa. 1, 329 A.2d 235 (1974).

delphia was rendered, suspending Respondents from the practice of law.[2] This decision was reversed by an Order of the Supreme Court dated October 16, 1974, because of error committed during the trial, and the case was remanded for a new disciplinary hearing. *In the Matter of Silverberg*, 459 Pa. 107, 327 A. 2d 106 (1974).

Upon remand, the Special Disciplinary Court, consisting of the same three judges who had previously heard the case was reconvened. The Special Disciplinary Court did not conduct a new hearing, but rather reconsidered the record of the prior hearing. On December 24, 1974, a supplemental Opinion and Order was issued by the Disciplinary Court affirming its previous decision that Respondents should be suspended from the practice of law. That decision was reversed by the Supreme Court by an Order dated October 3, 1975, because Respondents had not been afforded a new hearing on the merits by the reconvened Disciplinary Court. *In the Matter of Oxman*, 463 Pa. 225, 344 A.2d 804 (1975). The case was remanded a second time for a new hearing.

No action was taken on the matter until March 14, 1978, when President Judge Edward J. Bradley wrote to Allen B. Zerfoss, Esq., Chief Disciplinary Counsel of the Disciplinary Board of the Supreme Court of Pennsylvania, requesting the Board to handle any further necessary proceedings. The request was agreed to on May 3, 1978.[3] By order of July 13, 1978, Judge Bradley appointed Mr. Zerfoss and John W. Herron, Esq., Assistant Disciplinary Counsel-in-Charge of District 1, new special counsel to prosecute the disciplinary charges. William Stewart, Esq.

2. A third member of the law firm, Edward L. Silverberg, was also suspended from the practice of law.

3. Memorandum in Support of Petitioner's Answer to Respondents' Objections, unlettered Exhibit, Letter of May 4, 1979 from Judge Edward J. Bradley to John W. Herron, Esq.

who was the original special counsel, was appointed to to serve as consultant to special counsel.

By Order of February 16, 1979, Judge Bradley appointed a new Special Disciplinary Court, the members being the Honorable Levy Anderson, the Honorable Norman Jenkins and the Honorable Armand Della Porta.

On February 21, 1979, a pre-trial conference was held.[4] Pursuant to that meeting, on February 23, 1979, a Petition for Imposition of Discipline was refiled by special counsel.

By Order of May 11, 1979, Judge Bradley replaced Judge Jenkins with the Honorable Matthew W. Bullock, Jr. because of a potential, personal conflict of interest.

On May 23, 1979, Respondents Preliminary Objections were filed. Oral argument was held on June 7, 1979, and on June 8, 1979, the Preliminary Objections were dismissed.

On June 22, 1979, an Appeal was filed in the Supreme Court by Respondents from the dismissal of the Preliminary Objections.

On June 27, 1979, Respondents petitioned this Court to amend its Order to certify pursuant to Pennsylvania Rule of Appellate Procedure 1312(a)(2), that a controlling question of law exists so as to permit an interlocutory appeal.

On June 29, 1979, the Petition to Amend the Order was denied.

The Respondents raised three issues in their Preliminary Objections: (1) the lack of jurisdiction of the Special Disciplinary Court; (2) the delay in rescheduling the hearing; (3) fairness and impartiality of the Court.

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4. The conference was attended by the Honorable Levy Anderson, the Honorable Norman Jenkins, the Honorable Armand Della Porta; Allen B. Zerfoss, Esq., John W. Herron, Esq.; and Thomas B. Rutter, Esq., representing Respondents.

JURISDICTION

The Respondents contend that the instant disciplinary matter is governed by the 1972 Rules of Disciplinary Enforcement of the Supreme Court of Pennsylvania, and that President Judge Bradley had no authority to appoint a new Special Disciplinary Court. Supreme Court Rule 17 pertaining to the establishment and organization of a new disciplinary system became effective March 21, 1972. However, Rule 17-25 specifically provided:

> "These Rules shall not apply to any special judicial investigation in existence at the time of the adoption of these Rules, which, together with any disciplinary proceedings arising therefrom, shall be concluded under the procedure established for the conduct of such investigation."

The special judicial investigation out of which the instant charges arose commenced in 1971. The procedures ordered by President Judge Jamieson received the approval of the Supreme Court in *In the Matter of Shigon*, 462 Pa. 1, 329 A.2d 235 (1974). This matter is therefore not covered by Rule 17. *See In the Matter of Shigon, Id.* at 9.

The Supreme Court of Pennsylvania acknowledged the continuing jurisdiction of the Court of Common Pleas of Philadelphia when, on October 3, 1975, it remanded the instant matter for a new hearing.

Thereafter, President Judge Bradley had the right to order prosecution of the case resumed and having done so, he was mandated by a fair reading of the Supreme Court's opinion to appoint a new Special Disciplinary Court.

The new Special Disciplinary Court does therefore have jurisdiction of the instant matter.

DELAY IN RESCHEDULING HEARING

The Respondents contended that the Petition for Imposition of Discipline against them should have been dis-

missed because their constitutional rights have been violated as a result of the delay in scheduling a new hearing.

The delay between the Supreme Court's order of remand on October 3, 1975 and Judge Bradley's order of July 13, 1978, was caused by inadvertence. Special Counsel, William P. Stewart, requested to withdraw from the case because of other commitments by letter dated November 12, 1975;[5] Judge Bradley became involved with reorganization of the Philadelphia court administration staff;[6] and Respondents never requested that a date for the rehearing be set, or, until May 23, 1979, that the charges be dismissed.

While the delay is indeed most unfortunate, we hold that it has not caused a violation of Respondents' constitutional rights, so as to require dismissal of the Petition.

In *Office of Disciplinary Counsel v. Campbell*, 463 Pa. 472, 345 A.2d 616 (1975), the Supreme Court of Pennsylvania set forth the touchstone by which constitutional attacks on disciplinary proceedings are to be evaluated:

> "In *In Re Echeles*, 430 F.2d 347, 349-50 (7th Cir. 1970), the court presented a lucid explanation of the purpose of a disciplinary action: '[D]isbarment and suspension proceedings are neither civil nor criminal in nature but are special proceedings, sui generis, and result from the inherent power of courts over their officers. Such proceedings are not law suits between parties litigant but rather are in the nature of an inquest or inquiry as to the conduct of the respondent. They are not for the purpose of punishment, but rather seek to determine the fitness of an officer of the court

5. Memorandum in Support of Petitioner's Answer to Respondents' Objections, Exhibit "B", Letter of November 12, 1975, from William P. Stewart to Edward J. Bradley.

6. *Id.*, unlettered Exhibit, Letter of May 4, 1979, from Edward J. Bradley to John W. Herron.

> to continue in that capacity and to protect the courts and the public from the official ministration of persons unfit to practice. Thus the real question in issue in a disbarment proceeding is the public interest and an attorney's right to continue to practice the profession imbued with the public trust.' (Citation omitted.) *Accord In Re Berlant*, — Pa. —, —, 328 A.2d 471, 473 (1974).
>
> "We need only add that although disciplinary proceedings are sui generis, they have been styled 'quasi-criminal.' *In Re Ruffalo*, 390 U.S. 544, 551, 88 S.Ct. 1222, 20 L.Ed. 117 (1968). As such certain procedural and substantive rights have necessarily attached themselves to those proceedings. . . ." *Id.*, 345 A.2d at 619-20.

It has been held that the lawyer against whom discipline is sough must be advised of the nature of the charges, *In Re Ruffalo*, 390 U.S. 544, 551, 20 L.Ed. 117, 88 S.Ct. 1222 (1968); and he or she can assert the Fifth Amendment privilege against self-incrimination, *Spevack v. Klein*, 385 U.S. 511, 17 L.Ed. 2d 574, 87 S.Ct. 625 (1967).

However, not all constitutional rights afforded defendants in criminal cases apply to disciplinary proceedings. For instance, the standard of proof required for sustaining disbarment is "by a preponderance of the evidence," rather than "beyond a reasonable doubt." *In Re Berlant*, 458 Pa. 439, 328 A.2d 471, 473 (1974). Principles of res judicata and double jeopardy do not bar a disciplinary proceeding which follows the disposition of criminal charges, though based on substantially the same conduct. *Office of Disciplinary Counsel v. Campbell, supra. See, e.g., In Re Echeles*, 430 F.2d 347 (7th Cir. 1970); *Hawkins v. State Bar of California*, 23 C.3d 622 (1979); *In re Pennica*, 36 N.J. 401, 177 A.2d 721 (1962); *In re Browning*, 23 Ill. 2d

483, 179 N.E. 2d 14 (1961); *Maryland State Bar Association, Inc. v. Frank*, 272 Md. 528, 325 A.2d 718 (1974). Likewise, it has been held that the constitutional right to a speedy trial does not apply to disciplinary proceedings. *Maryland State Bar Association, Inc. v. Frank, supra; Bar Association of Baltimore City v. Posner*, 275 Md. 250, 339 A.2d 657 (1975), *cert. denied* 423 U.S. 1016; *In the Matter of O'Hara*, 63 A.D. 2d 500, 408 N.Y.S. 2d 70 (N.Y. App. Div. 1978).[7]

However, due process requirements may necessitate dismissal of disciplinary charges if delay has caused actual prejudice.

In *Wilhelm's Case*, 269 Pa. 416, 112 Atl. 560 (1921), there was a five year delay between institution of disbarment proceedings and the hearing, during which time the respondent continued to practice law. In affirming orders of disbarment, the Supreme Court held that ". . . the statute of limitations has no application to such case . . . . The delay was not so great as to warrant a dismissal of the rule on the ground of laches . . . especially as it inured to respondent's benefit and in no respect resulted to his prejudice. . . ." *Id.* at 420-21.

In *Ullo v. State Board of Nurse Examiners*, — Pa. Cmwlth. —, 398 A.2d 764 (1979), the Commonwealth Court affirmed the suspension of petitioner's nursing license, although there was almost a two year delay between the last alleged act of wrongdoing and the Citation and Notice of Hearing by the Board. During the interim, Ms. Ullo had obtained new nursing employment and had

7. Even if the right to a speedy trial did apply, it would be necessary for Respondents to show that they were prejudiced by the delay. *Barker v. Wingo*, 407 U.S. 514, 33 L.Ed.2d 101, 92 S.Ct. 2182 (1972); *Commonwealth v. Roundtree*, 469 Pa. 241, 364 A.2d 1359 (1976); *State Dental Council and Examining Board v. Pollack*, 457 Pa. 264, 274, 318 A.2d 910 (1974).

been promoted to a supervisory position. In rejecting her argument that the suspension proceedings were barred by laches and the constitution, the court held that there had been no showing of harm or prejudice caused by the delay. She did not claim that the delay affected her ability against the charges, nor did she contend that in reliance on the delay she altered her professional career.

In *State Dental Council and Examining Board v. Pollack, supra,* the Supreme Court rejected an argument that appellant was denied due process where there was a three year delay between alleged improper conduct and a suspension hearing before the Board, because no harm or prejudice was alleged.

In *State Board of Funeral Directors v. Pieslak,* 24 Pa. Comwlth. 315, 355 A.2d 590 (1976), it was held that a funeral director was not denied due process by virtue of the fact that there was a 2½ year delay between the close of hearings and the Board's issuance of its adjudication suspending his license, where appellant continued to work, and he was not prejudiced by the delay.

In *In the Matter of O'Hara,* 63 A.D. 2d 500 (N.Y. App. Div. 1978), it was held that the right to a speedy trial, statute of limitations and the doctrine of laches did not apply although nine years had elapsed between the first instance of wrongdoing and the institution of disbarment proceedings.

In *Caldwell v. State Bar of California,* 13 C.3d 488, 119 Cal. Rptr. 217, 531 P.2d 785 (1975), petitioner asserted he was deprived of due process of the law by the nine year delay between the filing of the complaint against him and the issuance of the notice to show cause. (Eight hearings were then held, and the local administrative committee of the state bar did not issue its findings and conclusions until almost a year later). The Court held "that any unreasonable delay which may have occurred is

neither a denial of due process of law . . . nor a jurisdictional defect . . . . '[M]ere lapse of time is no defense unless *specific* prejudice is shown' . . . ." *Id.* at 496.[8]

In the instant matter the Respondents have not alleged that they were prejudiced by the delay in any specific way. They asserted only that memories may have dimmed and they are older and less able to pursue new careers if they should be disbarred.

These same arguments were considered and rejected by the Supreme Court of California in *Caldwell, supra.* In that case the Court said:

> "Petitioner fails to show specific prejudice within the meaning of the foregoing rule. He asserts only that 'the passage of time dulls the memory. Witnesses were either unavailable or unable to recollect. . . .' These 'witnesses,' however, are not further identified. Such vague generalizations are manifestly insufficient to discharge his burden." *Id.* at 496.
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> "Petitioner also contends he was 51 years of age in 1963 when these proceedings were initiated, that he is now 63, and that at this age he is handicapped in undertaking any new enterprises in lieu of practicing law. He thus argues the delay is indeed prejudicial. While we do not approve of any dilatoriness by the State Bar . . . , we point out petitioner had as a compensating factor the benefit of those 12 uninterrupted years of law practice." *Id.* at 496, n.9.

Because Respondents have no constitutional right to a speedy trial, they have alleged no specific prejudice

8. In California, delay in holding disciplinary proceedings is a factor to be considered in mitigation of the penalty. *Caldwell, supra; Hawkins v. State Bar of California,* 23 C.3d 622, 153 Cal. Rptr. 234, 591 P.2d 524 (1979).

caused by the delay, the delay was inadvertant, and because Respondents never acted affirmatively to bring about a more expeditious resolution of the matter, this Court refused to dismiss the Petition for Imposition of Discipline as a result of said delay.

### Impartiality of Court

Finally, the Respondents contended that they will be unable to obtain a fair hearing because all Pennsylvania judges have been prejudiced by knowledge of the improper testimony admitted at the first trial, which caused the Supreme Court to reverse the decision of the former Special Disciplinary Court.

The charges against the Respondents were intially brought in 1972. The Supreme Court reversed with an opinion in 1974. A second reversal occurred in 1975, with an opinion.

Although the present members of the Special Disciplinary Court undoubtedly read the two Supreme Court opinions when they were published, none of us have any recollection of the content of those opinions.

In deciding the Preliminary Objections filed by the Respondents, the members of this Court have refrained from reading the record of the first trial and we have not personally re-read the Supreme Court's opinion, *In the Matter of Silverberg, supra.* We have likewise not read any material contained in motions or briefs which referred to substantive aspects of the prior trial.

The members of the presently constituted Special Disciplinary Court have no personal knowledge or recollection of the nature of the testimony which was improperly admitted at Respondents' first trial and we will make every reasonable effort in the future to insulate ourselves from learning anything that would tend to hinder

this Court from deciding the instant matter fairly and impartially, based solely on the evidence which will be presented at trial.

For the reasons set forth above, Respondents' Preliminary Objections were dismissed.

Because this Court was of the opinion that the jurisdictional and due process issues raised by Respondents' Preliminary Objections have already been answered in prior decisions by the appellate courts of this Commonwealth, this Court refused to certify this matter pursuant to Pennsylvania Rule of Appellate Procedure 1312(a)(2).

It is in the best interests of the public and the Pennsylvania bar that the re-trial of this matter, which is presently scheduled to begin September 4, 1979, proceed without further delay and that the charges against the Respondents be finally resolved.

BY THE COURT:

/s/ LEVY ANDERSON
Anderson, *J.*

/s/ BULLOCK
Bullock, *J.*

/s/ A. DELLA PORTA
Della Porta, *J.*

## APPENDIX D

### Judgment of the Supreme Court of Pennsylvania

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SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

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Nos. 270 & 369, January Term, 1979
and No. 80-3-704

(C.P. Philadelphia, No. D-27,
August Term, 1972)

Orders of 6/8/79, 9/4/79, 8/6/80

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IN RE:
HARRY J. OXMAN and
RALPH S. LEVITAN, Appellants

APPEALS OF:
HARRY J. OXMAN and
RALPH S. LEVITAN

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JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the Orders of the Court of Common Pleas, Special Disciplinary Court, Philadelphia County, be, and the same is hereby affirmed and order that appellants be suspended from practice of law immediately. It is further ordered that the periods of

suspension shall be computed from the date of filing of Opinion.

BY THE COURT:

CARL RICE
Carl Rice, Esquire
Prothonotary

Dated: December 17, 1981